

California Sprouts, LLC Evidence List
California Sprouts, LLC
4/5 December 2014

| Exhibit No. | Document Date | Document |
|--------------------|----------------------|---|
| A | 8/22/12 | Central Valley Regional Water Quality Control Board's Revised Notice of Applicability (NOA) for Waste Discharge Requirements for Limited Threat Discharges of Treated/Untreated Groundwater From Cleanup Sites, Wastewater From Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water |
| B | 8/1/14 | Letter from California Sprouts to Lucio Orellana Subject eSMR2 Quarterly Self-Monitoring Report Submittal for April-June 2014 for, California Sprouts, Sacramento Facility, Sacramento County, Order R5-2013-0073-027, NPDES No. CA CAG995002, and Second Quarterly Monitoring Report for 2014 |
| C | 10/13/14 | Pacific Coast Sprout Farms' Third Quarterly Monitoring Report for 2014 |
| D | Various | Information obtained from the Official California Legislative Information website and from the California State Archives |



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

22 August 2012

TO: LIMITED THREAT GENERAL ORDER ENROLLEES
(SEE DISTRIBUTION LIST – PAGE 2)

REVISED NOTICE OF APPLICABILITY (NOA) FOR

WASTE DISCHARGE REQUIREMENTS FOR LIMITED THREAT DISCHARGES OF TREATED/UNTREATED GROUNDWATER FROM CLEANUP SITES, WASTEWATER FROM SUPERCHLORINATION PROJECTS, AND OTHER LIMITED THREAT WASTEWATERS TO SURFACE WATER

TO ALL CONCERNED PERSONS AND AGENCIES:

Enclosed is Order R5-2012-0080 amending existing Waste Discharge Requirements Order R5-2008-0082 for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water (Limited Threat General Order). Order R5-2012-0080 was adopted by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) at its 3 August 2012 Board meeting.

The sole amendments to the existing Limited Threat General Order are located in Provisions V.A.1 and V.B.1 of Attachment E, the Monitoring and Reporting Program. The amendments reduce the monitoring frequency of the acute and chronic toxicity testing from annually to once during the 5-year term of the Limited Threat General Order. Therefore, if the acute and chronic toxicity testing has already been conducted for your project, then the Discharger is **not** required to conduct the testing again. Please review the amended Limited Threat General Order, available for download from the Central Valley Water Board's Internet website at http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

Any person aggrieved by the action of the Central Valley Water Board to revise the NOA may petition the State Water Resources Control Water Board to review the action in accordance with California Water Code Section 13320 and California Code of Regulations, Title 23, Sections 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date of this NOA, except that if the thirtieth day following the date of

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BOEE, EXECUTIVE OFFICER
11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

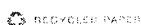


EXHIBIT A

this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

If you have any questions regarding the amendments, please contact Gayleen Perreira at (916) 464-4824 or gperreira@waterboards.ca.gov.



Pamela C. Creedon
Executive Officer

Enclosure: Amending Order R5-2012-0080

DISTRIBUTION LIST:

David Smith, U.S. Environmental Protection Agency, Region IX, San Francisco
Phil Isorena, State Water Resources Control Board, Sacramento
Bob Perreault, Plumas County, Gopher Hill Landfill Leachate Disposal, Quincy
Jeffrey Sutton, TCCA & BoR Red Bluff Diversion Dam Fish Passage Improvement Project
2010, Willows
James Diel, UPRR, Dunsmuir Railyard, Roseville
Daniel Scholl, California Sprouts, LLC, Pacific Coast Sprout Farms Sacramento Facility,
Sacramento
Anthony Baus, Carson Hill Gold Mine Corp, Carson Hill Gold Mine Project, Angels Camp
Manuel R. Molina, City of Manteca, Woodward Ave Utility Project, Manteca
John Shroeter, East Bay MUD, Camanche South Shore Recreation Area, Oakland
John Shroeter, East Bay MUD, Pardee Reservoir Recreation Area, Oakland
Rajah Ponniah, Kiewit Power, Construction Marsh Landing Generator Station Project,
Antioch
Doug Fortun, Mather Air Force Base, Main Base, McClellan AFB
Ralph Roberts, PG&E, Almond Plant No. 2, San Ramon
Rick Lund, Placer County Water Agency, Auburn Tunnel, Auburn
Greg Pryor, Recology, Hay Road, Vacaville
John Bissett, SAFCA, Natomas Levee Improvement Project, Phase 4a, Sacramento
George Machado, San Juan Water District, Flow Test and Maintenance, Granite Bay
Eric McDonald, Sconza Candy Company, Oakdale
Marie Spurgeon, U.S. Bureau of Reclamation, Mormon Island Auxiliary Dam, Folsom
Toby Wong, City of West Sacramento, Dewatering Project, West Sacramento



August 1, 2014

Lucio Orellana
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

SUBJECT: eSMR² QUARTERLY SELF-MONITORING REPORT SUBMITTAL FOR
April – June 2014 FOR, California Sprouts, Sacramento Facility, Sacramento
County, ORDER R5-2013-0073-027, NPDES No. CA CAG995002

This letter documents the written submission of the Q2 monitoring report.

Chose one:

☒ There were no violations per the requirements during the reporting period.

The following documents are found as attachments with this written submittal:

- NPDES Q2 2014 Reporting sheet
- NPDES Q2 2014 Lab Results 04/19/14
- NPDES Q2 2014 Lab Results 05/20/14
- NPDES Q2 2014 Lab Results 06/10/14
- Acute Toxicity Test Results 06/02/14

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designated to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,

Daniel Sholl
General Manager

Note: Per Standard Provisions, Reporting sections V.B.2 and V.B.3, the LRO must be a principal executive officer or ranking elected official of the Discharger's agency, or a duly authorized representative that meets the intent of 40 CFR 122.22(b)(2).

EXHIBIT B

| Parameter | Concentration | EFF-001 2Q 2014 | Date Sampled | Effluent Limit Monthly Average | Lab Reporting Limit |
|---------------------------------------|-------------------|--------------------|----------------------------|-----------------------------------|---------------------|
| Location | | | | | |
| Sampling Date | | | | | |
| Flow | 6,401,500 gallons | | Total Flow over Period | | |
| Electrical Conductivity (EC) at 25° C | 510 µmhos/cm | | 4/19/14 | 700 µmhos/cm | 1.00 µmhos/cm |
| Electrical Conductivity (EC) at 25° C | 420 µmhos/cm | | 5/20/14 | 700 µmhos/cm | 1.00 µmhos/cm |
| Electrical Conductivity (EC) at 25° C | 450 µmhos/cm | | 6/10/14 | 700 µmhos/cm | 1.00 µmhos/cm |
| pH | 7.5 SU | | Average over sample period | >6.5 and <8.5 | |
| Average Water Temp | 68 °F | | | | |



IEH - JL ANALYTICAL

217 Primo Way • Modesto, California 95358 • Office (209) 538-8111 • FAX (209) 538-3966

California Sprouts-Warehouse Way

5640 Warehouse Way
Sacramento, CA 95826

Report # L2.2-14R27947
Report Date: 04/25/2014
Received Date: 04/21/2014
Work Order: 319615

Laboratory Number: 31961501
Description: Waste Water, Test Permit, 4-19-14, 700

Analytical Results

| Constituent | Result | Minimum Level | Method Detection Limit | Method Reference | Analysis Date | Analysis Time | Analyst |
|--------------------------------|-------------|---------------|------------------------|-----------------------|---------------|---------------|---------|
| Electrical Conductivity (E.C.) | 510 umho/cm | 1.0 | 1.0 | SM 2510B ⁵ | 04/25/2014 | 12:18 | JA |

QC Results

| Constituent | QC Units | Blank | Matrix | Theoretical Spike | Matrix Spike | Matrix Spike Duplicate | Lab Control Spike | Precision % | Accuracy % | Response % |
|--------------------------------|----------|-------|--------|-------------------|--------------|------------------------|-------------------|-------------|------------|------------|
| Electrical Conductivity (E.C.) | umho/cm | < 1 | 510 | 1400 | 1800 | 1800 | 1400 | 0.1 | 92.6 | 100.2 |

Notes

At 25 °C

Authorized By: Amos Snider

04/25/2014

Amos Snider Laboratory Supervisor

ELAP Accreditation Laboratory Certificate #2776. These results relate only to the samples tested. This report shall not be reproduced except in full, without written approval of the laboratory.

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California Sprouts-Warehouse Way

5640 Warehouse Way
Sacramento, CA 95826

Report # L2.2-14R28322
Report Date: 05/23/2014
Received Date: 05/20/2014
Work Order: 321722

Laboratory Number: 32172201
Description: Waste Water, Test Permit, 5-20-14, 700

Analytical Results

| Constituent | Result | Minimum Level | Method Detection Limit | Method Reference | Analysis Date | Analysis Time | Analyst |
|--------------------------------|-------------|---------------|------------------------|-----------------------|---------------|---------------|---------|
| Electrical Conductivity (E.C.) | 430 umho/cm | 1.0 | 1.0 | SM 2510B ⁵ | 05/23/2014 | 13:22 | JA |

QC Results

| Constituent | QC Units | Blank | Matrix | Theoretical Spike | Matrix Spike | Matrix Spike Duplicate | Lab Control Spike | Precision % | Accuracy % | Response % |
|--------------------------------|----------|-------|--------|-------------------|--------------|------------------------|-------------------|-------------|------------|------------|
| Electrical Conductivity (E.C.) | umho/cm | < 1 | 430 | 1400 | 1700 | 1700 | 1400 | 0.9 | 94.2 | 100.2 |

Notes

At 25 °C

Authorized By: Amos Snider

05/23/2014

Amos Snider Laboratory Supervisor

ELAP Accreditation Laboratory Certificate #2776. These results relate only to the samples tested. This report shall not be reproduced except in full, without written approval of the laboratory.

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California Sprouts-Warehouse Way

5640 Warehouse Way
Sacramento, CA 95826

Report # L2.2-14R28519
Report Date: 06/12/2014
Received Date: 06/10/2014
Work Order: 323222

Laboratory Number: 32322201
Description: Water, Special, Other California Sprouts - Warehouse Way, Diana Muniz

Analytical Results

| Constituent | Result | Minimum Level | Method Detection Limit | Method Reference | Analysis Date | Analysis Time | Analyst |
|--------------------------------|-------------|---------------|------------------------|-----------------------|---------------|---------------|---------|
| Electrical Conductivity (E.C.) | 450 umho/cm | 1.0 | 1.0 | SM 2510B ⁵ | 06/11/2014 | 16:30 | JA |

QC Results

| Constituent | QC Units | Blank | Matrix | Theoretical Spike | Matrix Spike | Matrix Spike Duplicate | Lab Control Spike | Precision % | Accuracy % | Response % |
|--------------------------------|----------|-------|--------|-------------------|--------------|------------------------|-------------------|-------------|------------|------------|
| Electrical Conductivity (E.C.) | umho/cm | < 1 | 510 | 1400 | 1800 | 1800 | 1400 | 0.2 | 94.6 | 100.0 |

Notes

At 25 °C

Authorized By: Amos Snider

06/12/2014

Amos Snider Laboratory Supervisor

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SIERRA
FOOTHILL LABORATORY Inc

REPORT

255 SCOTTSVILLE BLVD.
P.O. BOX 1268 JACKSON, CA 95642
(209) 223 - 2800
sandy@sierralab.com

06/15/2014

California Sprouts, LLC
DBA Pacific Coast Sprout Farms
Attn: Dan Sholl
5640 Warehouse Way
Sacramento CA 95826

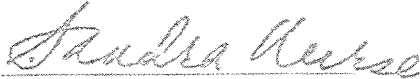
96h Static Acute Screening Bioassay with Rainbow Trout 6/03/14-6/07/14
Effluent collected 6/02/14 0900
Laboratory #748812

Summary:

On 6/03/14 1400, 16-day old rainbow trout were exposed to Effluent sample collected 6/02/14 0900. The sample was 29 old at test initiation. At 96h test termination, there was 100% survival of organisms exposed to Effluent sample collected 6/02/14 0900. There was 100% survival of organisms exposed to laboratory control.

Percent survival of organisms exposed to Effluent sample collected 6/02/14 0900 was not significantly different from percent survival of organisms exposed to laboratory control.

Summary prepared by:


Sandy Nurse



Central Valley Regional Water Quality Control Board

Date: 10/13/14

Attention: NPDES Compliance/Enforcement Unit
centralvalleysacramento@waterboards.ca.gov

Discharger: Pacific Coast Sprout Farms
Name of Facility: Pacific Coast Sprout Farms Sacramento Facility
WDRs Order Number: R5-2013-0073-027
County: Sacramento

I am hereby submitting to the Central Valley Water Board the following self-monitoring report:

1st / 2nd / (3rd) / 4th (circle one) Quarterly Monitoring Report for the year of 20 14

Please check the appropriate box below:

- ☒ A discharge to waters of the United States occurred during this monitoring period.
- ☐ There were no discharges to waters of the United States during this monitoring period.

Violation Notification

During the monitoring period, there were (were not) (circle one) any violations of the WDR's.

1. The violations were:
2. Have the violations been corrected? Yes / No. If no, what will be done to correct the violations:

Certification Statement

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Signature: [Signature] Phone: 916-381-6054
Printed Name: Daniel Shell Date: 10/13/14

EXHIBIT C

| Parameter | Concentration | Date Sampled | Effluent Limit | Lab Reporting Limit |
|---------------------------------------|-------------------------|--------------|-------------------------|--------------------------|
| Location | EFF-001 | | Monthly Average | |
| Sampling Date | 3Q 2014 | | | |
| Electrical Conductivity (EC) at 25° C | 471 $\mu\text{mhos/cm}$ | 7/12/2014 | 700 $\mu\text{mhos/cm}$ | 1.00 $\mu\text{mhos/cm}$ |
| Electrical Conductivity (EC) at 25° C | 418 $\mu\text{mhos/cm}$ | 8/7/2014 | 700 $\mu\text{mhos/cm}$ | 1.00 $\mu\text{mhos/cm}$ |
| Electrical Conductivity (EC) at 25° C | 540 $\mu\text{mhos/cm}$ | 9/2/2014 | 700 $\mu\text{mhos/cm}$ | 1.00 $\mu\text{mhos/cm}$ |

Q3 2014

| Date | Time | water usage per day (gal) | SU | Date | Time | water usage per day (gal) | SU |
|----------------------------|----------|---------------------------|-----|-------------------------------|----------|---------------------------|-----|
| Tuesday, July 01, 2014 | 4:00 AM | 93,800 | 7.4 | Saturday, August 16, 2014 | 8:00AM | 41,000 | 7.6 |
| Wednesday, July 02, 2014 | 4:00 AM | 75,300 | 7.4 | Sunday, August 17, 2014 | 5:40AM | 39,300 | 7.5 |
| Thursday, July 03, 2014 | 4:30 AM | 75,300 | 7.4 | Monday, August 18, 2014 | 4:00AM | 34,800 | 7.5 |
| Friday, July 04, 2014 | 4:00 AM | 76,000 | 7.4 | Tuesday, August 19, 2014 | 4:00AM | 40,200 | 7.5 |
| Saturday, July 05, 2014 | 6:00 AM | 79,500 | 7.4 | Wednesday, August 20, 2014 | 4:00AM | 45,400 | 7.5 |
| Sunday, July 06, 2014 | 6:00 AM | 50,100 | 7.4 | Thursday, August 21, 2014 | 4:00AM | 36,400 | 7.5 |
| Monday, July 07, 2014 | 4:00 AM | 120,100 | 7.4 | Friday, August 22, 2014 | 4:30AM | 22,600 | 7.5 |
| Tuesday, July 08, 2014 | 4:00 AM | 85,300 | 7.4 | Saturday, August 23, 2014 | 9:30AM | 52,000 | 7.6 |
| Wednesday, July 09, 2014 | 4:00 AM | 81,400 | 7.4 | Sunday, August 24, 2014 | 8:00AM | 35,700 | 7.7 |
| Thursday, July 10, 2014 | 4:00 AM | 86,200 | 7.4 | Monday, August 25, 2014 | 3:00AM | 34,800 | 7.6 |
| Friday, July 11, 2014 | 2:00 AM | 87,800 | 7.4 | Tuesday, August 26, 2014 | 5:00AM | 49,000 | 7.5 |
| Saturday, July 12, 2014 | 2:00 AM | 105,600 | 7.4 | Wednesday, August 27, 2014 | 4:00AM | 34,300 | 7.5 |
| Sunday, July 13, 2014 | 4:00 AM | 44,200 | 7.4 | Thursday, August 28, 2014 | 4:00AM | 41,800 | 7.6 |
| Monday, July 14, 2014 | 4:00 AM | 78,500 | 7.4 | Friday, August 29, 2014 | 4:00AM | 40,700 | 7.6 |
| Tuesday, July 15, 2014 | 4:00 AM | 84,100 | 7.4 | Saturday, August 30, 2014 | 6:00AM | 72,500 | 7.5 |
| Wednesday, July 16, 2014 | 4:00 AM | 78,800 | 7.4 | Sunday, August 31, 2014 | 6:00AM | 3,100 | 7.5 |
| Thursday, July 17, 2014 | 4:00 AM | 79,700 | 7.4 | Monday, September 01, 2014 | 4:00AM | 40,000 | 7.5 |
| Friday, July 18, 2014 | 4:00 AM | 89,000 | 7.4 | Tuesday, September 02, 2014 | 5:00AM | 46,600 | 7.5 |
| Saturday, July 19, 2014 | 4:00 AM | 88,900 | 7.4 | Wednesday, September 03, 2014 | 3:00AM | 30,400 | 7.5 |
| Sunday, July 20, 2014 | 6:00 AM | 15,500 | 7.4 | Thursday, September 04, 2014 | 4:00AM | 41,600 | 7.5 |
| Monday, July 21, 2014 | 4:00 AM | 141,200 | 7.4 | Friday, September 05, 2014 | 3:10AM | 49,100 | 7.6 |
| Tuesday, July 22, 2014 | 4:00 AM | 14,400 | 7.4 | Saturday, September 06, 2014 | 8:00AM | 31,700 | 7.5 |
| Wednesday, July 23, 2014 | 4:00 AM | 142,500 | 7.4 | Sunday, September 07, 2014 | 9:10AM | 42,100 | 7.5 |
| Thursday, July 24, 2014 | 4:00 AM | 49,400 | 7.4 | Monday, September 08, 2014 | 3:00AM | 21,500 | 7.5 |
| Friday, July 25, 2014 | 4:00 AM | 67,800 | 7.4 | Tuesday, September 09, 2014 | 4:00AM | 33,800 | 7.5 |
| Saturday, July 26, 2014 | 4:00 AM | 36,300 | 7.4 | Wednesday, September 10, 2014 | 4:00AM | 18,800 | 7.6 |
| Sunday, July 27, 2014 | 6:00 AM | 127,100 | 7.4 | Thursday, September 11, 2014 | 4:00AM | 39,300 | 7.5 |
| Monday, July 28, 2014 | 4:00 AM | 84,300 | 7.4 | Friday, September 12, 2014 | 4:00AM | 38,200 | 7.5 |
| Tuesday, July 29, 2014 | 4:00 AM | 61,400 | 7.4 | Saturday, September 13, 2014 | 7:30AM | 47,000 | 7.5 |
| Wednesday, July 30, 2014 | 4:30 AM | 58,100 | 7.4 | Sunday, September 14, 2014 | 10:30AM | 44,000 | 7.6 |
| Thursday, July 31, 2014 | 4:30 AM | 80,400 | 7.4 | Monday, September 15, 2014 | 4:00AM | 30,500 | 7.5 |
| Friday, August 01, 2014 | 11:59 AM | 106,700 | 7.6 | Tuesday, September 16, 2014 | 4:00AM | 45,600 | 7.5 |
| Saturday, August 02, 2014 | 8:00 AM | 84,000 | 7.4 | Wednesday, September 17, 2014 | 4:00AM | 38,800 | 7.5 |
| Sunday, August 03, 2014 | 6:00 AM | 126,400 | 7.6 | Thursday, September 18, 2014 | 4:00AM | 40,400 | 7.5 |
| Monday, August 04, 2014 | 4:00 AM | 22,300 | 7.6 | Friday, September 19, 2014 | 12:00 AM | 49,600 | 7.6 |
| Tuesday, August 05, 2014 | 4:00 AM | 65,000 | 7.6 | Saturday, September 20, 2014 | 6:00 AM | 18,000 | 7.6 |
| Wednesday, August 06, 2014 | 4:00 AM | 57,900 | 7.6 | Sunday, September 21, 2014 | 6:00AM | 40,200 | 7.5 |
| Thursday, August 07, 2014 | 4:00 AM | 99,100 | 7.6 | Monday, September 22, 2014 | 4:00AM | 39,500 | 7.5 |
| Friday, August 08, 2014 | 4:00 AM | 74,300 | 7.6 | Tuesday, September 23, 2014 | 4:00AM | 36,600 | 7.6 |
| Saturday, August 09, 2014 | 5:00 AM | 66,200 | 7.5 | Wednesday, September 24, 2014 | 4:00AM | 46,400 | 7.6 |
| Sunday, August 10, 2014 | 5:00 AM | 46,900 | 7.6 | Thursday, September 25, 2014 | 4:00AM | 38,500 | 7.6 |
| Monday, August 11, 2014 | 4:00 AM | 74,400 | 7.5 | Friday, September 26, 2014 | 7:00AM | 50,100 | 7.6 |
| Tuesday, August 12, 2014 | 12:00 AM | 74,700 | 7.5 | Saturday, September 27, 2014 | 4:00AM | 77,700 | 7.6 |
| Wednesday, August 13, 2014 | 5:00 AM | 94,200 | 7.5 | Sunday, September 28, 2014 | 9:00AM | 9,900 | 7.5 |
| Thursday, August 14, 2014 | 5:00 AM | 81,500 | 7.5 | Monday, September 29, 2014 | 4:00AM | 34,700 | 7.5 |
| Friday, August 15, 2014 | 5:00AM | 83,200 | 7.6 | Tuesday, September 30, 2014 | 4:00AM | 19,500 | 7.6 |



AEMTEK, INC.

46309 Warm Springs Blvd.
Fremont, CA 94539
Phone: 510-979-1979
Fax: 510-668-1980
E-mail: labdata@aemtek.com
Web: www.aemtek.com

Certificate of Analysis
AEMTEK #: 1407282 Electric Conductivity Test

Report Issued To: Pacific Coast Sprout Farm
5640 Warehouse Way
Sacramento, CA 95826
Contact: QC Department
Report Issue Date: 2014-07-12

Sampling Date: 2014-07-12
Sample Received: 2014-07-12
Analysis Started: 2014-07-12
Analysis Performed By: AK

| Analyte | | | Conductivity |
|--------------------------------------|--|------------|---|
| Method | | | SM 2510B |
| Reporting Unit | | | $\mu\text{S/cm}$ ($\mu\text{mho/cm}$) |
| Method Detection Limit for Reporting | | | 1.0 |
| Sample ID | Sample Description | Lot #/Code | RESULTS |
| 1 | Water Discharge Electric Conductivity Test | 1 BH | 471 |
| QC | Laboratory Control Sample (LCS)* | | Passed |
| QC | Laboratory Blanks | | Absent |

Terminology: mg/L: milligrams/Liter (ppm) P/A: Present/Absent
<: denotes "less than" MPN: Most Probable Number
ND: Not Detected, less than reporting limit mL: milliliter
SM: Standard Methods for the Examination of Water and Wastewater, 20th edition (APHA/AWWA)

Notes The EPA secondary drinking water limit for TDS is 500 ppm. Mineral waters greater than 1500mg/L or less than 500mg/L require labeling. Purified (R/O, demineralized, deionized) drinking waters must be less than 10ppm.

EPA & CDPH maximum contaminant level (MCL) for coliforms is <1 (Absent)

*The LCS are appropriately selected known value materials used to demonstrate test validity.
Passed = required positive and negative culture controls gave expected responses.

SM 9223 (ONPG-MUG) uses Idexx Colilert, Colilert18 or CPI Colitag media.
SM 9223 enumeration uses Idexx Quanti-Tray/Quanti-Tray2000 or multiple tube format (10x10mL).

Certification AEMTEK certifies that the testing reported in this document is performed in compliance with California Department of Public Health standards for applicable ELAP certified analyses. Any exceptions to the applicable standards have been noted. This certification applies only to the tests and/or analytes specified in this report. Unless specifically noted, the samples were received in acceptable condition.

Conditions The test results presented in this report pertain only to the samples supplied by the client and analyzed by AEMTEK. This report shall not be reproduced, except in full, without written authorization of AEMTEK. AEMTEK shall have no liability to anyone with respect to any interpretations or uses of the laboratory report, decisions made or actions taken as a result of or based on the data reported. In no event shall AEMTEK's liability with respect to the reported test results exceed the amount paid for the project by the client to AEMTEK.

Contact For more information about the testing, please contact the laboratory by calling 510-979-1979 or sending e-mail to labreports@aemtek.com. Visit www.aemtek.com for general information.

AEMTEK CDPH ELAP Certificate # 2607

Report Authorized By:

Florence Wu, Ph.D., President



AEMTEK, INC.

46309 Warm Springs Blvd.
Fremont, CA 94539
Phone: 510-979-1979
Fax: 510-668-1980
E-mail: labdata@aemtek.com
Web: www.aemtek.com

Certificate of Analysis
AEMTEK #: 1408040 Electric Conductivity Test

Report Issued To: Pacific Coast Sprout Farm
5640 Warehouse Way
Sacramento CA 95826
Contact: QC Department
Report Issue Date: 2014-08-02

Sampling Date: 2014-08-02
Sample Received: 2014-08-02
Analysis Started: 2014-08-02
Analysis Performed By: AK

| Analyte | | Conductivity |
|--------------------------------------|--|---|
| Method | | SM 2510B |
| Reporting Unit | | $\mu\text{S/cm}$ ($\mu\text{mho/cm}$) |
| Method Detection Limit for Reporting | | 1.0 |
| Sample ID | Sample Description | RESULTS |
| 1 Btt | Water Discharge Electric Conductivity Test | 418 |
| QC | Laboratory Control Sample (LCS)* | Passed |
| QC | Laboratory Blanks | Absent |

Terminology: mg/L: milligrams/Liter (ppm) P/A: Present/Absent
<: denotes "less than" MPN: Most Probable Number
ND: Not Detected, less than reporting limit mL: milliliter
SM: Standard Methods for the Examination of Water and Wastewater, 20th edition (APHA/AWWA)

Notes The EPA secondary drinking water limit for TDS is 500 ppm. Mineral waters greater than 1500mg/L or less than 500mg/L require labeling. Purified (R/O, demineralized, deionized) drinking waters must be less than 10ppm.

EPA & CDPH maximum contaminant level (MCL) for coliforms is <1 (Absent)

*The LCS are appropriately selected known value materials used to demonstrate test validity.
Passed = required positive and negative culture controls gave expected responses.

SM 9223 (ONPG-MUG) uses Idexx Colilert, Colilert18 or CPI Colitag media.
SM 9223 enumeration uses Idexx Quanti-Tray/Quanti-Tray2000 or multiple tube format (10x10mL).

Certification AEMTEK certifies that the testing reported in this document is performed in compliance with California Department of Public Health standards for applicable ELAP certified analyses. Any exceptions to the applicable standards have been noted. This certification applies only to the tests and/or analytes specified in this report. Unless specifically noted, the samples were received in acceptable condition.

Conditions The test results presented in this report pertain only to the samples supplied by the client and analyzed by AEMTEK. This report shall not be reproduced, except in full, without written authorization of AEMTEK. AEMTEK shall have no liability to anyone with respect to any interpretations or uses of the laboratory report, decisions made or actions taken as a result of or based on the data reported. In no event shall AEMTEK's liability with respect to the reported test results exceed the amount paid for the project by the client to AEMTEK.

Contact For more information about the testing, please contact the laboratory by calling 510-979-1979 or sending e-mail to labreports@aemtek.com. Visit www.aemtek.com for general information.

AEMTEK CDPH ELAP Certificate # 2607

Report Authorized By:

Florence Wu, Ph.D., President



AEMTEK, INC.

46309 Warm Springs Blvd.
Fremont, CA 94539
Phone: 510-979-1979
Fax: 510-668-1980
E-mail: labdata@aemtek.com
Web: www.aemtek.com

Certificate of Analysis
AEMTEK #: 1409037 Electric Conductivity Test

Report Issued To: Pacific Coast Sprout Farm
5640 Warehouse Way
Sacramento CA 95826
Contact: QC Department
Report Issue Date: 2014-09-02

Sampling Date: 2014-09-02
Sample Received: 2014-09-02
Analysis Started: 2014-09-02
Analysis Performed By: EL

| Analyte | | | Conductivity |
|--------------------------------------|--|------------|---|
| Method | | | SM 2510B |
| Reporting Unit: | | | $\mu\text{S/cm}$ ($\mu\text{mho/cm}$) |
| Method Detection Limit for Reporting | | | 1.0 |
| Sample ID | Sample Description | Lot #/Code | RESULTS |
| 1 | Water Discharge Electric Conductivity Test | 1 Btt | 540 |
| QC | Laboratory Control Sample (LCS)* | | Passed |
| QC | Laboratory Blanks | | Absent |

Terminology:
mg/L: milligrams/Liter (ppm)
<: denotes "less than"
ND: Not Detected, less than reporting limit
SM: Standard Methods for the Examination of Water and Wastewater, 20th edition (APHA/AWWA)
P/A: Present/Absent
MPN: Most Probable Number
mL: milliliter

Notes
The EPA secondary drinking water limit for TDS is 500 ppm. Mineral waters greater than 1500mg/L or less than 500mg/L require labeling. Purified (R/O, demineralized, deionized) drinking waters must be less than 10ppm.

EPA & CDPH maximum contaminant level (MCL) for coliforms is <1 (Absent)

*The LCS are appropriately selected known value materials used to demonstrate test validity.
Passed = required positive and negative culture controls gave expected responses.

SM 9223 (ONPG-MUG) uses Idexx Colilert, Colilert18 or CPI Colitag media.
SM 9223 enumeration uses Idexx Quanti-Tray/Quanti-Tray2000 or multiple tube format (10x10mL).

Certification
AEMTEK certifies that the testing reported in this document is performed in compliance with California Department of Public Health standards for applicable ELAP certified analyses. Any exceptions to the applicable standards have been noted. This certification applies only to the tests and/or analytes specified in this report. Unless specifically noted, the samples were received in acceptable condition.

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Contact
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AEMTEK CDPH ELAP Certificate # 2607

Report Authorized By:

Florence Wu, Ph.D., President

Background Sheet

SB 1284 (Ducheny)

Mandatory Minimum Penalties

SUMMARY:

SB 1284 would conform the statute with the intended purpose of AB 1541, specifically that MMPs be assessed on “polluters that hide violations of the Clean Water Act from state authorities.” Because the definition of “serious violation” extends to local agencies with discharge permits that simply fail to file a report indicating they have no discharges or discharges so minute they do not meet state-set contamination levels, changes to statute are necessary to prevent unwarranted assessments, including those imposed in recent years.

BACKGROUND:

AB 1541 (Montanez) of 2003 added Section 13385.1 to the Water Code, expanding the definition of a “serious violation” eligible for imposition of a MMP to include a failure to file a discharge report. The Assembly Appropriations Committee analysis indicated that there would be “potential penalty revenue increases probably less than \$100,000 annually.” Legislative Committee analyses also stated that the intended purpose of this bill was “to ensure better reporting by including polluters that hide violations of the Clean Water Act from state authorities on the list of violations that face mandatory minimum fines....”

Several bills were introduced in 2009 that addressed various issues surrounding the MMP provisions of the Water Code, but primarily focused on timing issues to limit imposition of such penalties. None of these bills addressed the issue by seeking exemptions from penalties for the above described failures to report.

WHAT THE BILL DOES?

- 1) Current law is revised to allow a regional board, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
- 2) In Section 2 of the bill, Section 13385.1(a)(2) is amended to provide that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a “serious violation” that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. This section is also amended to state that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties.
- 3) Further, a provision is added to provide, on a one-time basis only, that where a discharger has not previously received notification from the state or regional board of an

enforcement action imposing mandatory minimum penalties and where the current violation consists of failures to file discharge monitoring reports for reporting periods where discharges did not violate numeric effluent limitations, that discharger will be subject to a total fine of \$3,000 per required report. After this one-time fine, a discharger who subsequently fails to file such a report will be fined in accordance with Section 13385(h). This section is also amended to state that regardless of whether the failure to file such reports is subject to the one-time relief provided, the failure to file the required report(s) may be subject to discretionary penalties.

4) Lastly, a provision is added as new subdivision (e) to Water Code Section 13385.1 to provide that the amendments made to that section would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act.

SPONSOR: Association of California Water Agencies
Regional Council of Rural Counties

SUPPORT:

League of Cities
California Association of Sanitation Agencies
California Chamber of Commerce
California State Association of Counties
California Special Districts Association
California Water Association
Pico Water District
Crescenta Valley Water District
El Dorado Irrigation District
Inland Empire Utilities Agency
City of Camarillo
Napa County
Napa Berryessa Resort Improvement District
Lake Berryessa Resort Improvement District

OPPOSITION: Sierra Club California
California Coastkeeper alliance

STATUS: Assembly ES&TM

CONTACT: Kim Craig, 916-651-4040

Summary of SB 1284 Amendments taken in the Senate

The proposed amendments to SB 1284 made four significant changes to the original provisions of the bill. Specifically:

- 1) Current law is revised to allow a regional board, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
- 2) In Section 2 of the bill, Section 13385.1(a)(2) is amended to provide that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a “serious violation” that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. This section is also amended to state that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties.
- 3) Further, a provision is added to provide, on a one-time basis only, that where a discharger has not previously received notification from the state or regional board of an enforcement action imposing mandatory minimum penalties and where the current violation consists of failures to file discharge monitoring reports for reporting periods where discharges did not violate numeric effluent limitations, that discharger will be subject to a total fine of \$3,000 per required report. After this one-time fine, a discharger who subsequently fails to file such a report will be fined in accordance with Section 13385(h). This section is also amended to state that regardless of whether the failure to file such reports is subject to the one-time relief provided, the failure to file the required report(s) may be subject to discretionary penalties.
- 4) Lastly, a provision is added as new subdivision (e) to Water Code Section 13385.1 to provide that the amendments made to that section would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act.

Also note, the language changing the definition of disadvantaged community from 20,000 to 10,000 was removed in Senate Environmental Quality Committee.

SB 1284 Ducheny
Mandatory Minimum Penalties

February 19, 2010

Summary:

The Association of California Water Agencies (ACWA), along with, the Regional Counsel of Rural Counties (RCRC) and the California Chamber of Commerce (Chamber) propose legislation that would revise the statute that requires a mandatory minimum penalty for various violations of the Water Code related to the reporting of waste discharges by water users. This legislative proposal would amend Section 13385(j) of the Water Code, which specifies what type of violations result in the imposition of a mandatory minimum penalty. SB 1284 is supported by the League of California Cities (League) and California State Association of Counties (CSAC).

Mandatory minimum penalties (MMPs) are assessed at a rate of \$3,000 per “serious violation.” Serious violations range from large scale discharge to the failure to file a waste discharge monitoring report indicating there has been no discharge. This wide ranging definition has resulted in costly MMPs to be assessed on agencies whose offense is merely a paperwork issue. Local agencies are currently being assessed exorbitantly high fines for their failure to file a report of no discharges or for discharges that do not meet state-established thresholds for contaminants.

One small water district was assessed a fine of \$627,000 for failing to file reports for numerous quarters of no discharges, and other quarters where no pollution limits were exceeded. Another community obtained an NPDES permit for discharges related to the construction of a new well. However due to funding issues, construction was delayed and the well was not constructed for over 18 months after the permit was first issued. This community was assessed fines of \$330,000 for failure to file reports of no discharges from its unconstructed well. This legislation attempts to remedy this issue to ensure that costly MMPs are assessed only for those violations that warrant them.

Background:

AB 1541 (Montanez) of 2003 added Section 13385.1 to the Water Code, expanding the definition of a “serious violation” eligible for imposition of a MMP to include a failure to file a discharge report. The Assembly Appropriations Committee analysis indicated that there would be “potential penalty revenue increases probably less than \$100,000 annually.” Legislative Committee analyses also stated that the intended purpose of this bill was “to ensure better reporting by including polluters that hide violations of the Clean Water Act from state authorities on the list of violations that face mandatory minimum fines....”

Several bills were introduced in 2009 that addressed various issues surrounding the MMP provisions of the Water Code, but primarily focused on timing issues to limit imposition of such penalties. None of these bills addressed the issue by seeking exemptions from penalties for the above described failures to report.

This Proposal:

SB 1284 would conform the statute with the intended purpose of AB 1541, specifically that MMPs be assessed on “polluters that hide violations of the Clean Water Act from state authorities.” Because the definition of “serious violation” extends to local agencies with discharge permits that simply fail to file a report indicating they have no discharges or discharges so minute they do not meet state-set contamination levels, changes to statute are necessary to prevent unwarranted assessments, including those imposed in recent years.

This proposal would amend Section 13385(j) of the Water Code to include provisions specifying situations where mandatory minimum penalties do not apply. Under this proposal, failing to file a monitoring report indicating no discharges or discharges not violating effluent limitations would not constitute a serious violation and therefore not be eligible for the imposition of a mandatory minimum penalty.

In addition, the proposed amendments would not subject a discharger who fails to file a discharge monitoring report to imposition of MMPs where the SWRCB or applicable Regional Board has not informed the discharger of the alleged violation within 90 days of the date on which the discharge monitoring report was due to be filed.

Further, the Legislature has recognized that the MMPs can have a particularly harsh impact on small disadvantaged communities, and the statute allows the State and Regional water boards to allow a small community to direct an amount equivalent to the MMP to a project to bring the facility into compliance. The population threshold for small community compliance projects is 10,000. This does not align with other definitions of small communities, such as that used for the small community wastewater grant program or under recent bond measures. In this economic climate, MMPs impose a significant burden upon small community ratepayers that are already facing significant compliance costs, and it is important to expand the eligible pool for completing compliance projects. This proposal would expand the definition of small communities in order to increase the eligibility for using money that would otherwise be paid as a fine towards completion of compliance projects.

The Legislature has also recognized that it is unfair to penalize an agency that needs time to make capital improvements or operational changes before it can come into compliance. Existing law limits the relief that can be granted to a single 5 year period. Now, 10 years after passage of the original MMP law, this 5 year maximum timeframe presents issues. The first is that the SWRCB and USEPA have subsequently recognized that up to 10 years may be needed for compliance with increasingly stringent discharge requirements. The SWRCB’s compliance schedule policy, endorsed by USEPA, allows compliance schedules of up to 10 years in permits at the regional water boards’ discretion. In addition, due to a quirk of timing with the California Toxics Rule¹, some agencies have been allowed a total of 10 years to meet CTR requirements

¹ The CTR allows compliance schedule inside a permit only until May 2010.

without incurring MMPs (5 years in the permit and 5 years in a compliance order) while others will get a shortened time to implement the same improvements because their permits were not issued until less than 5 years of in-permit compliance schedule authority remained. This proposal would revise statute to reflect the current State policy allowing up to 10 years where justified.

Legislative Language:

Reporting Violations:

Add the following provisions to Water Code Section 13385(j), which specifies situations where the mandatory minimum penalties do not apply:

- 1) With respect to a violation for a failure to file a discharge monitoring report, a violation for which the state board or regional board does not inform the discharger of the alleged violation within 90 days of the date on which the discharge monitoring report was due to be filed.
- 2) A violation that consists of a failure to file a discharge monitoring report for any period in which no discharge occurred.
- 3) A violation that consists of a failure to file a discharge monitoring report for any period in which discharges do not violate effluent limitations contained in waste discharge requirements that contain numeric effluent limitations.
- 4) The above provisions apply only to violations that occur on or after January 1, 2004.

Small Community Relief:

Amend section 13385(k)(2) to revise the population threshold for a small community compliance project from 10,000 to 20,000, consistent with the small community grant program definition.

Compliance Schedules:

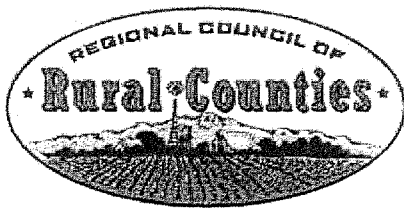
Amend Section 13385(j)(3) to allow up to 10 years of protection from MMPs pursuant to an enforcement order. This would be consistent with the SWRCB's compliance schedule policy, endorsed by USEPA, which allows compliance schedules of up to 10 years in permits at the regional water boards' discretion.

Contact Information:

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Association of California Water Agencies
916-441-4545

Kathy Mannion
Regional Counsel of Rural Counties
916-447-4806

Alpine Amador Butte Calaveras Colusa
Del Norte El Dorado Glenn Imperial Inyo
Lake Lassen Madera Mariposa Merced



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Chief Financial Officer - Karl Dolk

March 17, 2010

The Honorable Denise Ducheny
California State Senate
Room 5035, State Capitol
Sacramento, CA 94814

Re: Senate Bill 1284 – Water Quality: Mandatory Minimum Penalties – Support

Dear Senator Ducheny:

The Regional Council of Rural Counties (RCRC) is pleased to co-sponsor SB 1284 relating to water quality and mandatory minimum penalties (MMPs).

RCRC, on behalf of our 31 member counties, has worked with the State Water Resources Control Board (State Water Board) and staff over the past several years to address administratively some of the specific challenges small communities face related to their wastewater systems. In 2008 the State Water Board staff developed a Small Community Wastewater Strategy and the State Water Board subsequently adopted Resolution 2008-0048 - Promoting Strategies to Assist Small and/or Disadvantaged Communities with Wastewater Needs. The proposed modest legislative changes to the MMP law contained in SB 1284 will provide additional relief for small communities with financial hardships statewide.

In 2003 the MMP statute was expanded to require the MMP penalty of \$3,000 per month for late monitoring reports. SB 1284 will provide that violations involving the failure to file a discharge monitoring report are not subject to MMPs if:

- There is no discharge during the applicable reporting period,
- There are discharges during the reporting period but the discharges do not violate effluent limitations contained in waste discharge requirements that include numeric effluent limitations, and
- When the State Water Board or a regional water board does not inform the discharger of the alleged violation within 90 days of the date on which the monitoring report was required to be filed.

SB 1284 specifies that these provisions of the bill, when enacted, will apply to violations without regard to the date on which the violations occurred or occur.

Current law allows the State Water Board or regional boards, in lieu of assessing all or a portion of the MMPs against a publicly owned treatment works (POTW) serving a small community, to require the POTW to spend an equivalent amount towards the completion of a compliance project if findings, such as financial hardship, are made. SB 1284 would expand the definition of "a publicly owned treatment works serving a small community" to a population of 20,000, up from the current 10,000. This change would conform the MMP enforcement program with the State Water Board's Small Community Wastewater Grant Program.

Many small communities are currently on failing septic systems or have old and undersized wastewater treatment plants that cannot meet current water quality standards. Small communities located in rural, sparsely-populated areas also require greater pipeline and pumping infrastructure. Due to their small rate base, small communities lack the economies of scale to build and maintain adequate wastewater systems. Additionally, small communities generally face higher per capita capital and operations and maintenance (O&M) costs, which results in higher, sometimes prohibitive, sewer rates. Allowing POTWs serving small communities with a financial hardship and populations between 10,001 to 20,000 to fund projects to bring them into compliance instead of paying MMPs which they can ill afford is both reasonable and responsible.

Finally, SB 1284 extends the exception to the imposition of MMPs from the current maximum five year time schedule for bringing a water discharge into compliance with the effluent limitation to a maximum of ten years. This change is consistent with the State Water Boards' compliance schedule policy which allows compliance schedules of up to ten years in permits at the discretion of the regional water board. This makes sense given increasingly stringent discharge requirements and the scarcity of funding assistance.

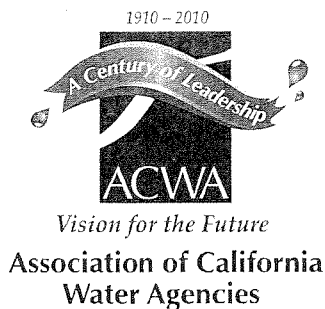
In conclusion, RCRC appreciates your introduction of SB 1284 and looks forward to working with you and your staff to secure passage of this important measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Mannion".

Kathy Mannion
Legislative Advocate

cc: Members, Senate Committee on Environmental Quality
Committee Consultant



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APR 16

April 15, 2010

The Honorable Joseph Simitian
Chair, Senate Environmental Quality Committee
California State Senate
State Capitol, Room 2080
Sacramento, CA 95814

SUBJECT: Senate Bill No. 1284 (Ducheny) – Support/Sponsor

Dear Chairman Simitian:

The Association of California Water Agencies (ACWA), is pleased to co-sponsor along with the Regional Council of Rural Counties and the California Chamber of Commerce SB 1284, relating to water quality related mandatory minimum penalties.

Current law gives the State Water Resources Control Board (SWRCB) and the California Regional Water Quality Control Boards (Regional Board) the authority to prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. The Porter-Cologne Act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each "serious waste discharge violation." Civil liability may be imposed administratively by the SWRCB or a regional board or those boards may request the Attorney General to petition the superior court to impose the liability.

MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the way statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties.

SB 1284 would provide that certain violations involving the failure to file a discharge monitoring report for no discharges or discharges that do not reach a regulated level are not subject to those mandatory minimum civil penalties. Specifically, SB 1284 would provide that violations involving the failure to file a discharge monitoring report are not subject to MMPs if:

1. There is no discharge during the reporting period,
2. There are discharges during the reporting period but the discharges do not violate effluent limitations contained in waste discharge requirements that include numeric effluent limitations, and
3. When the SWRCB or a Regional Board does not inform the discharger of the alleged violation within 90 days of the date on which the monitoring report was due to be filed.

Several of ACWA's public agency members with NPDES permits requiring discharge monitoring reports have reported that they have received excessive, disproportionate fines for a simple failure

SB 1284 (Ducheny)
April 15, 2010
Page Two

to file the required report. One small water agency's fine is in excess of \$600,000. Whereas certain violations are appropriately viewed as serious, in this case it was merely a paperwork issue, and this bill would help prevent instances such as this from further occurrence.

Further, the Legislature has recognized that the MMPs can have a particularly harsh impact on small disadvantaged communities, and the statute allows the State and Regional water boards to allow a small community to direct an amount equivalent to the MMP to a project to bring the facility into compliance. The population threshold for small community compliance projects is 10,000. This does not align with other definitions of small communities, such as that used for the small community wastewater grant program or under recent bond measures. In this economic climate, MMPs impose a significant burden upon small community ratepayers that are already facing significant compliance costs, and it is important to expand the eligible pool for completing compliance projects. This proposal would expand the definition of small communities to 20,000 in order to increase the eligibility for using money that would otherwise be paid as a fine towards completion of compliance projects.

The Legislature has also recognized that it is unfair to penalize an agency that needs time to make capital improvements or operational changes before it can come into compliance. Existing law limits the relief that can be granted to a single 5 year period. Now, 10 years after passage of the original MMP law, this 5 year maximum timeframe presents issues. The first is that the SWRCB and United States Environmental Protection Agency (USEPA) have subsequently recognized that up to 10 years may be needed for compliance with increasingly stringent discharge requirements. The SWRCB's compliance schedule policy, endorsed by USEPA, allows compliance schedules of up to 10 years in permits at the regional water boards' discretion. In addition, due to a quirk of timing with the California Toxics Rule (CTR), some agencies have been allowed a total of 10 years to meet CTR requirements without incurring MMPs (5 years in the permit and 5 years in a compliance order) while others will get a shortened time to implement the same improvements because their permits were not issued until less than 5 years of in-permit compliance schedule authority remained. This proposal would revise statute to reflect the current State policy allowing up to 10 years where justified.

For the above noted reasons, ACWA is pleased to sponsor this bill and respectfully requests your 'Aye' vote when it is heard before your committee on April 19, 2010.

Sincerely,



Ronald L. Davis
State Legislative Director

RD:ca

cc: The Honorable Denise Ducheny
Honorable Members, Senate Committee on Environmental Quality
Ms. Rachel Wagoner, Consultant, Senate Committee on Environmental Quality
Mr. Lance Christensen, Senate Republican Caucus

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator S. Joseph Simitian, Chairman
2009-2010 Regular Session

BILL NO: SB 1284

AUTHOR: Ducheny

AMENDED: Introduced

FISCAL: Yes

URGENCY: No

HEARING DATE: April 19, 2010

CONSULTANT: Rachel Machi
Wagoner

SUBJECT: WATER QUALITY: MANDATORY MINIMUM CIVIL
PENALTIES

SUMMARY:

Existing law, under the Porter-Cologne Water Quality Control Act:

- 1) Provides that any person who violates prescribed provisions of the Clean Water Act or the Porter-Cologne Water Quality Control Act is subject to civil liability, and sets requirements for determining the amount of any liability.
- 2) Requires a mandatory minimum penalty (MMP) of \$3,000 to be assessed for each serious violation, under certain circumstances.
- 3) Authorizes the State Water Resources Control Board (SWRCB) or a regional water quality control board (RWQCB), in lieu of assessing all or a portion of the mandatory minimum penalties, to require a publicly-owned treatment works (POTW) serving a small community to spend an equivalent amount towards the completion of a compliance project proposed by the POTW if the POTW or SWRCB makes certain findings (e.g., compliance project is designed to correct the violations within five years, compliance project is consistent with SWRCB enforcement policy, POTW has prepared a financing plan to complete the compliance project).
- 4) Provides that for purposes of #3, a "POTW serving a small community" serves a population of 10,000 or fewer or a rural county, with a financial hardship as determined by the SWRCB after considering such factors as median income of the residents, rate of unemployment, or low population

density.

- 5) Provides an exception to the imposition of MMPs for a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. For the purposes of the exception, a time schedule cannot exceed five years, except under certain conditions.

This bill:

- 1) Provides that violations involving failure to report are not subject to MMPs if the violation is:
 - A failure to file a discharge monitoring report for which the state board or regional board does not inform the discharger of the alleged violation within 90 days of the required date of filing;
 - A failure to file a discharge monitoring report for any period in which no discharge occurred;
 - A failure to file a discharge monitoring report for any period in which discharges do not violate effluent limitations contained in waste discharge requirements that include numeric effluent limitations.
- 2) Changes the definition of “publicly-owned treatment works serving a small community” by expanding the service population from 10,000 to 20,000.
- 3) Changes the definition of “serious violation” to be consistent with the MMP relief in #1.
- 4) Extends the time schedule order limit for coming into compliance from five years to ten years.
- 5) Provides that the provisions of this bill shall apply retroactively to previous violations without regard to the date on which the violations occurred.

COMMENTS:

- 1) Purpose of Bill. According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended

purpose. However, the sponsors feel that the way the statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The sponsor asserts that SB 1284 would provide that certain violations involving the failure to file a discharge monitoring report for no discharges or discharges that do not reach regulated level are not subject to those MMPs.

According to the Association of California Water Agencies (ACWA), there are several public agency members with permits requiring reporting which believe that they have received excessive, disproportionate fines for a simple failure to file the report. ACWA cites an example of one small water agency fine that is in excess of \$600,000.

Further, the sponsor states that the Legislature has recognized that the MMPs can have a particularly harsh impact on small disadvantaged communities and the statute allows the SWRCB and the RWQCBs to allow a small community to direct an amount equivalent to the MMP to a project to bring the facility into compliance. The population threshold for small community compliance projects is 10,000. The sponsor feels that in this economic climate, MMPs impose a significant burden upon small community ratepayers that are already facing significant compliance costs, and it is important to expand the eligible pool for completing compliance projects by expanding the definition of small community to 20,000.

- 2) Mandatory minimum penalties. MMPs were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code §13385(h) requires an MMP of \$3,000 for each "serious" violation.

The Water Boards are also required by California Water Code §13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six-consecutive months:

- Violates effluent limitations;
- Fails to file a report of waste discharge or file and incomplete report; or

- Violates a toxicity effluent limitation where the WDR does not contain pollutant-specific effluent limitations for toxic pollutants.

3) Amendments Needed.

- a) Time Schedules for Waste Discharge Compliance. Existing law provides that a RWQCB may establish a time schedule for a district to bring waste discharge into compliance with effluent limitations, taking into account certain factors as specified. During this period the district, while out of compliance with its permit and water quality standards, is protected from assessment of MMPs. The bill as currently drafted extends the statutorily allowed time schedule from five year to ten years. The bill's proponents argue that there are many projects that simply cannot be done in five years. However, is it appropriate to potentially extend the time schedule for all projects to such a long period of time, allowing a district to be out of compliance for a decade and having a project go on for all that time without any public comment? The bill should be amended to keep the time schedule at five years initially, but allow a district to apply to the RWQCB for a five-year extension for projects warranting additional time for completion. By requiring the RWQCB to consider an additional five-year extension, the public would have an additional opportunity to comment on the project.
- b) Mandatory Minimum Penalties for failure to report. Under existing law RWQCBs are required to assess MMPs for serious violations including failure to report as specified by the district's permit. The proponents have presented several cases where RWQCBs have allowed extensive periods of time to pass before citing a district for failure to report resulting in extensive fines. One of the cases presented was for three years of reporting violations that resulted in a fine of \$627,000. It is the district's responsibility to know and understand all of the provisions of its permit. However, when inadvertent mistakes are made, they are apparently not currently being caught and corrected by the RWQCBs in a timely fashion and noncompliance with the reporting requirements is allowed to continue resulting in very high penalties. This creates an especially difficult burden for small districts that may not have attorneys on staff to help with the implementation of the permit.

As currently drafted, the bill would exempt certain reporting requirements from the MMP assessment requirements. However, the monthly reports

are an important tool for the RWQCBs and the public to track the compliance record of a district. If a district is allowed to bypass reporting all together when in compliance, how would the RWQCB or public know when the district is out of compliance? Additionally, monthly reporting is a demonstration tool for the district: providing the district with a chronology documenting its compliance record.

Rather than exempt reporting from the MMP violations, it is more appropriate to allow for a more reasonable penalty for those small districts that have inadvertently violated their reporting requirements for the first time, but are not in violation of the permit's discharge and effluent requirements. Additionally, an amendment should be taken to require RWQCBs to institute better communications with their permitted districts. SWRCB indicates that they are currently working to clear the backlog on MMP enforcement actions and institute policies for preventing a future backlog.

- c) Amnesty for past violations. The bill as currently drafted states that “the amendments made to this section by this act.....apply to violations without regard to the date on which the violations occurred,” thereby changing the MMP violation provisions retroactively. That retroactively creates an unfair playing field by letting those districts off the hook that are currently and have been out of compliance, while those districts that complied with their permits or paid the penalties associated with reporting violations, complied with a five-year time schedule or paid the MMPs associated with being out of compliance, complied with the current small community requirements of the law. In essence, this provision of SB 1284 would make what was a violation no longer a violation retroactively. This would also create an expectation that money be refunded to those districts that have paid their penalties associated with any changes made pursuant to this bill. If the state does not refund that money, do they have a cause of action against the state for creating the unfair playing field? The Legislature does not tie the hands of future Legislatures or, as a rule, undo the laws of past Legislatures.

The bill should be amended to strike this provision.

- d) Expansion of population cap: Assistance vs. Exemption. The bill's proponents state that there is precedence for increasing the threshold for the definition of “small community” to 20,000 in two existing state grant

programs for drinking water and water quality providing special allocations to small and disadvantaged communities (Public Resources Code Sections 30925, the Small Communities Water Pollution Control Requirement Grants, and Water Code 13193.9, the Waste Water Collection Treatment Disposal Project: Allocation of Funds to Disadvantaged Communities).

However, the Water Code contains 5 other definitions for "small community" with population caps for certain programs. None of these references exceed 10,000 persons.

| <u>Water Code §</u> | <u>Population Cap</u> |
|---|-----------------------|
| §13999.2(j) Clean Water Bond Law of 1984 | 5,000 or less |
| §4052(k) Clean Water/Reclamation Bond Law of 1988 | 3,500 or less |
| §78610(d) Clean Water/Water Recycling Program | 5,000 or less |
| §79084(b) Costa-Machado Water Act of 2000 | 10,000 or less |
| §79120(d) Costa-Machado Water Act of 2000 | 10,000 or less |

In both the Small Communities Water Pollution Control Requirement Grant Program, and the Waste Water Collection Treatment Disposal Project: Allocation of Funds to Disadvantaged Communities program, the Legislature recognized the need to assist communities of up to 20,000 persons in funding necessary infrastructure projects in order to bring them into compliance as quickly as possible with water quality standards and thereby made specified funding available to them.

Increasing the statutory threshold for allowing small communities to expend an equivalent amount of money on coming into compliance in lieu of MMP assessment does not accomplish the same goal and may in fact create circumstances by which POTWs wait to come into compliance with drinking and waste water standards. By qualifying for what is in essence, an exemption from MMP violation assessments, POTWs could continue to discharge knowing that the MMPs they are accumulating will be applied to the compliance project when the POTW is ready to do the necessary compliance measures. This eliminates the disincentive to pollute intended by the MMP statute and creates an incentive to wait until funding is available to come into compliance. In the meantime, pollution into drinking water supplies continues to occur and the public health jeopardized.

Rather than letting small communities not pay the penalty for violating

water quality standards, perhaps the answer is to help these communities come into compliance as early as possible. Is there perhaps a better way to help small community POTWs avoid MMPs? As mentioned above, there are a number of funds that are designated to help these communities come into compliance. In addition, there are bond funds set aside specifically to help these communities with infrastructure projects. Are these funds being completely utilized by these small communities? If not, is there assistance that the SWRCB or the Department of Public Health can provide in accessing the funds?

This provision of the bill should be stricken. The author may wish to explore other ways the state can assist these communities to meet water quality compliance standards.

- 4) Related legislation. SB 390 (Alpert) Chapter 686, Statutes of 1999, revised the authority of RWQCB's to waive waste discharge requirements of the Porter-Cologne Water Quality Control Act as to a specific discharge if the waiver is not against the public interest and is not for a period to exceed five years; required RWQCB's and the SWRCB to enforce the conditions under which a waiver was granted; required RWQCB's, prior to renewing any waiver, to review waiver terms at a public hearing; and revised liability provisions where a person violates prescribed orders or discharges waste in violation of a waste discharge requirement waiver or condition.

AB 1541 (Montanez) Chapter 609, Statutes of 2003, classified the failure to file with SWRCB certain monitoring reports related to discharge of water pollutants or fill material as a "serious violation" and, thus, subjected this violation to a mandatory minimum \$3,000 penalty.

AB 2900 (La Malfa) of 2008 would have required the SWRCB or a RWQCB to expeditiously take appropriate action to assess any mandatory minimum penalty for each serious waste discharge violation of the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. (Died in the Assembly Committee on Environmental Safety and Toxic Materials.)

AB 913 (Logue) of 2009 would have prohibited the SWRCB or a RWQCB from imposing a mandatory minimum penalty for a violation for which an action to impose liability is not requested or imposed by the SWRCB or a RWQCB within 12 months of the SWRCB or RWQCB receiving notice of the violation. (Withdrawn by the author prior to its first hearing in the

Assembly Committee on Environmental Safety and Toxic Materials.)

AB 914 (Logue) of 2009 would have allowed the SWRCB, when determining financial hardship, to also consider the impact of the penalties on individual ratepayers if it finds that the review of the specified factors does not adequately represent the range of economic circumstances in a community. (Vetoed by Governor Schwarzenegger.)

AB 25 (Gilmore) of 2009-10 would increase the size of the population that can be served by POTWs serving a small community and provides alternative penalties to public school districts for their waste water discharge violations. (Currently in the Senate Environmental Quality Committee.)

- 5) Opponents' Arguments. Opponents state that exemptions in this bill from the MMP provisions of the Water Code for dischargers who fail to file required discharge monitoring reports send a message to the dischargers that these reports need not be filed – when in fact it is a condition of their permits. These permits are critical to tracking compliance with state and federal water quality laws.

Additionally, the opponents have concerns with regard to: (a) the practicality and necessity of the 90-day notice that RWQCBs would be required to provide dischargers who fail to file a monitoring report, as well as with (b) the impacts of the potential amendments to the time schedule provision of the bill.

SOURCE: Association of California Water Agencies
Regional Council of Rural Counties

SUPPORT: League of California Cities

OPPOSITION: California Coast Keeper Alliance
Sierra Club

BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary
 Senator Christine Kehoe, Chair

1284 (Ducheny)

Hearing Date: 05/10/2010 Amended: 04/26/2010
 Consultant: Brendan McCarthy Policy Vote: EQ 7-0

SB 1284 (Ducheny), Page 2

BILL SUMMARY: SB 1284 exempts certain violations of waste discharge reporting requirements from existing mandatory minimum penalties. The bill also extends the time limit under which dischargers must come into compliance with a permit requirement from five years to ten years.

Fiscal Impact (in thousands)

| Major Provisions | 2010-11 | 2011-12 | 2012-13 | Fund |
|---------------------------------------|---------|---------|---------|------|
| Upgrading permit tracking * system | \$360 | | Special | |
| Reduced penalty revenue ** | Unknown | | Special | |
| Additional enforcement cost * | Unknown | | Special | |

* Waste Discharge Permit Fund.

** Waste Discharge Permit Fund and Cleanup and Abatement Fund.

STAFF COMMENTS: This bill meets the criteria for referral to the Suspense File.

Under current law, parties that discharge waste into rivers and streams must meet waste discharge requirements set by the State Water Resources Control Board or a regional water quality control board. Dischargers are required to file periodic reports documenting the amount and characteristics of their discharges.

Current law establishes mandatory minimum penalties of \$3,000 for several specified violations of the law, including failure to report on discharges. There are several exceptions to the mandatory minimum penalty requirements. For instance, a regional board may make an exception if the discharger has a plan for coming into compliance within five years (or ten years if the discharger is in the process of upgrading its facilities to meet specified federal requirements).

SB 1284 (Ducheny), Page 2

SB 1284 exempts certain violations of reporting requirements from mandatory minimum penalties. Specifically, the bill exempts violations for a failure to file a discharge monitoring report when the State Water Board or a regional water board has not notified the discharger of the violation within 90 days. The bill exempts violations for a failure to file a discharge monitoring report for any period when there was no discharge. The bill exempts violations for a failure to file a discharge monitoring report for any period in which discharges did not violate the effluent limitations in the waste discharge requirement.

SB 1284 also allows the Water Board or regional water boards to avoid assessing a minimum mandatory penalty if the discharger has adopted a plan to come into compliance that will take not more than ten years.

Dischargers are currently required to provide reports to regional water board and/or the State Water Board. However, the water boards do not have a system in place to systematically record the receipt of these reports. Thus the water boards often do not realize that required reports are overdue. In some instances, dischargers have failed to file reports for several years and were never notified of this violation. Upon later review, these dischargers have been assessed very large fines for ongoing violations of the reporting requirement.

The State Water Board indicates that, in order to provide timely notification to dischargers of late reports, it will need to upgrade its tracking system. The State Water Board indicates that it will need about \$360,000 in additional staff and contract funds to upgrade their systems.

Because the bill exempts some violations from mandatory minimum penalties, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

Staff notes that by eliminating penalties for non-reporting when no discharge has occurred or when no violations of waste discharge requirements have occurred, some dischargers may elect not to file reports under these circumstances. However, because the water boards may not know why dischargers have stopped reporting, the water boards may incur additional enforcement costs to follow up with dischargers that have stopped filing reports. The extent of this impact is unknown.

SB 1284 (Ducheny), Page 2

AB 25 (Gilmore) provides alternative penalties for public school districts that violate waste discharge requirements. That bill is in the Senate Environmental Quality Committee.

Senate Appropriations Committee Fiscal Summary
Senator Christine Kehoe, Chair

SB 1284 (Ducheny)

Hearing Date: 05/27/2010
Consultant: Brendan McCarthy

Amended: 04/26/2010
Policy Vote: EQ 7-0

BILL SUMMARY: SB 1284 exempts certain violations of waste discharge reporting requirements from existing mandatory minimum penalties. The bill also extends the time limit under which dischargers must come into compliance with a permit requirement from five years to ten years.

| Fiscal Impact (in thousands) | | | | |
|-------------------------------------|---|-----------------------|-----------------------|--------------------|
| <u>Major Provisions</u> | <u>2010-11</u> | <u>2011-12</u> | <u>2012-13</u> | <u>Fund</u> |
| Reduced penalty revenue | Unknown, potentially in the hundreds of thousands | | | Special ** |
| Additional enforcement cost | Minor costs | | | Special * |

* Waste Discharge Permit Fund.

** Waste Discharge Permit Fund and Cleanup and Abatement Fund.

STAFF COMMENTS: SUSPENSE FILE. AS PROPOSED TO BE AMENDED.

Under current law, parties that discharge waste into rivers and streams must meet waste discharge requirements set by the State Water Resources Control Board or a regional water quality control board. Dischargers are required to file periodic reports documenting the amount and characteristics of their discharges.

Current law establishes mandatory minimum penalties of \$3,000 for several specified violations of the law, including failure to report on discharges. There are several exceptions to the mandatory minimum penalty requirements. For instance, a regional board may make an exception if the discharger has a plan for coming into compliance within five years (or ten years if the discharger is in the process of upgrading its facilities to meet specified federal requirements).

SB 1284 exempts certain violations of reporting requirements from mandatory minimum penalties. Specifically, the bill exempts violations for a failure to file a discharge monitoring report when the State Water Board or a regional water board has not notified the discharger of the violation within 90 days. The bill exempts violations for a failure to file a discharge monitoring report for any period when there was no discharge. The bill exempts violations for a failure to file a discharge monitoring report for any period in which discharges did not violate the effluent limitations in the waste discharge requirement.

SB 1284 also allows the Water Board or regional water boards to avoid assessing a minimum mandatory penalty if the discharger has adopted a plan to come into compliance that will take not more than ten years.

Dischargers are currently required to provide reports to regional water board and/or the State Water Board. However, the water boards do not have a system in place to systematically record the receipt of these reports. Thus the water boards often do not realize that required reports are overdue. In some instances, dischargers have failed to file reports for several years and were never notified of this violation. Upon later review, these dischargers have been assessed very large fines for ongoing violations of the reporting requirement.

The State Water Board indicates that, in order to provide timely notification to dischargers of late reports, it will need to upgrade its tracking system. The State Water Board indicates that it will need about \$360,000 in additional staff and contract funds to upgrade their systems.

Because the bill exempts some violations from mandatory minimum penalties, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

Staff notes that by eliminating penalties for non-reporting when no discharge has occurred or when no violations of waste discharge requirements have occurred, some dischargers may elect not to file reports under these circumstances. However, because the water boards may not know why dischargers have stopped reporting, the water boards may incur additional enforcement costs to follow up with dischargers that have stopped filing reports. The extent of this impact is unknown.

AB 25 (Gilmore) provides alternative penalties for public school districts that violate waste discharge requirements. That bill is in the Senate Environmental Quality Committee.

As proposed to be amended by the author, the bill would make the failure to file a report subject to discretionary penalties, but not mandatory minimum penalties, if there were no discharges during the time period covered by the report. The amendments also change the penalty for failure to file a report to \$3,000 for a first time failure to report, providing the discharger did not violate effluent limits. The bill would apply to violations that have not been finally imposed as of the date of enactment of the bill.

EQ

42719

05/27/10 03:40 PM
RN 10 14352 PAGE 1
Substantive

AMENDMENTS TO SENATE BILL NO. 1284
AS AMENDED IN SENATE APRIL 26, 2010

Amendment 1

On page 2, line 6, strike out "requirements" and insert:

requirement

Amendment 2

On page 8, line 37, after "(C)" insert:

(i)

Amendment 3

On page 9, line 2, strike out "For" and insert:

Except as provided in clause (ii), for

Amendment 4

On page 9, line 3, strike out "10" and insert:

five

Amendment 5

On page 9, line 4, strike out "If" and insert:

It will also provide that

(ii) (I) For purposes of the upgrade described in subclause (III) of clause (iv) of subparagraph (B), the time schedule shall not exceed 10 years in length.

(II) Following a public hearing, the regional board may extend the time schedule for an additional period not exceeding five years in length, if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation. This subclause does not apply to a time schedule described in subclause (I).

(iii) If

Amendment 6

On page 9, line 8, strike out "(i)" and insert:

(I)

ADOPTED

JUN 02 2010

SECRETARY OF SENATE



RN1014352

Amendment 7

On page 9, line 9, strike out "(ii)" and insert:

(II)

Amendment 8

On page 9, strike out lines 15 to 24, inclusive

Amendment 9

On page 11, line 26, after "(i)" insert a comma

Amendment 10

On page 12, strike out lines 8 to 16, inclusive, and insert:

(3) (A) Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 if the discharger submits a written statement to the state board or the regional board that includes both of the following:

(i) A statement that there were no discharges to waters of the United States during the relevant monitoring period.

(ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

(B) If, in a statement submitted pursuant to subparagraph (A), the discharger willfully states as true any material fact that he or she knows to be false, that person shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). Any public prosecutor may bring an action for a civil penalty under this subparagraph in the name of the people of the State of California, and the penalty imposed shall be enforced as a civil judgment.

(C) Notwithstanding subparagraph (A), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(b) (1) Notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall be assessed pursuant to subdivision (h) of Section 13385 only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met:

(A) The discharger did not previously receive, from the state board or a regional board, a notice of an enforcement action imposing a mandatory minimum penalty pursuant to subdivision (h) of Section 13385 for a failure to file a discharge monitoring report in connection with the same waste discharge requirements.

(B) The discharges during the period or periods covered by the report do not violate effluent limitations contained in waste discharge requirements that include numeric waste discharge requirements.

(2) Notwithstanding paragraph (1), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(3) This subdivision shall become inoperative on January 1, 2016.

Amendment 11

On page 13, below line 2, insert:

(e) The amendments made to this section by Senate Bill 1284 of the 2009–10 Regular Session of the Legislature shall apply to violations for which penalties have not been imposed pursuant to Section 13385 before the effective date of those amendments, without regard to the date on which the violations occurred.

AMENDED IN SENATE JUNE 2, 2010

AMENDED IN SENATE APRIL 26, 2010

SENATE BILL

No. 1284

Introduced by Senator Ducheny

February 19, 2010

An act to amend Sections 13385 and 13385.1 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as amended, Ducheny. Water quality: mandatory minimum civil penalties.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation or for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months, as prescribed. *For purposes of the mandatory minimum penalty, a serious waste discharge violation includes a failure to file a specified discharge monitoring report for each complete period of 30 days following the deadline for submitting the report.* Civil liability may be imposed administratively by the state board or a regional board, or those boards may request the Attorney General to petition the superior court to impose the liability.

This bill would provide that certain violations involving the failure to file a discharge monitoring report are not subject to those mandatory minimum penalties if certain requirements are met. *The bill would provide that a failure to file a discharge monitoring report is not a*

serious waste discharge violation if the discharger submits a specified statement to the regional board. The bill, until January 1, 2016, would require, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report.

(2) The state act includes within the exceptions to the imposition of those mandatory minimum penalties a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. The act prohibits, for the purposes of that exception, a time schedule order from exceeding 5 years in length, except as otherwise provided.

~~This bill, for the purposes of that exception, would instead prohibit that the time schedule order from exceeding 10 years in length.~~

This bill, with a specified exception, would authorize a regional board, following a public hearing, to extend the time schedule for an additional period not exceeding 5 years in length, under specified conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13385 of the Water Code is amended to
2 read:

3 13385. (a) A person who violates any of the following shall
4 be liable civilly in accordance with this section:

5 (1) Section 13375 or 13376.

6 (2) A waste discharge ~~requirements~~ *requirement* or dredged or
7 fill material permit issued pursuant to this chapter or any water
8 quality certification issued pursuant to Section 13160.

9 (3) A requirement established pursuant to Section 13383.

10 (4) An order or prohibition issued pursuant to Section 13243 or
11 Article 1 (commencing with Section 13300) of Chapter 5, if the
12 activity subject to the order or prohibition is subject to regulation
13 under this chapter.

14 (5) A requirement of Section 301, 302, 306, 307, 308, 318, 401,
15 or 405 of the Clean Water Act, as amended.

1 (1) A compilation of the number of violations of waste discharge
2 requirements in the previous calendar year, including stormwater
3 enforcement violations.

4 (2) A record of the formal and informal compliance and
5 enforcement actions taken for each violation, including stormwater
6 enforcement actions.

7 (3) An analysis of the effectiveness of current enforcement
8 policies, including mandatory minimum penalties.

9 (p) The amendments made to subdivisions (f), (h), (i), and (j)
10 during the second year of the 2001-02 Regular Session apply only
11 to violations that occur on or after January 1, 2003.

12 SEC. 2. Section 13385.1 of the Water Code is amended to read:

13 13385.1. (a) (1) For the purposes of subdivision (h) of Section
14 13385, a "serious violation" also means a failure to file a discharge
15 monitoring report required pursuant to Section 13383 for each
16 complete period of 30 days following the deadline for submitting
17 the report, if the report is designed to ensure compliance with
18 limitations contained in waste discharge requirements that contain
19 effluent limitations. This paragraph applies only to violations that
20 occur on or after January 1, 2004.

21 (2) For the purposes of paragraph (1), a discharge monitoring
22 report required pursuant to Section 13383 is not designed to ensure
23 compliance with effluent limitations contained in waste discharge
24 requirements if no discharges occur during the applicable reporting
25 period.

26 ~~(b) For the purposes of subdivision (h) of Section 13385, a~~
27 ~~"serious violation" does not include the failure to file a discharge~~
28 ~~monitoring report required pursuant to Section 13383 if during the~~
29 ~~period covered by the discharge monitoring report, the discharge~~
30 ~~or discharges do not violate effluent limitations contained in waste~~
31 ~~discharge requirements that include numeric waste discharge~~
32 ~~requirements. In that event, the failure to file the discharge~~
33 ~~monitoring report is subject to penalties in accordance with~~
34 ~~subdivision (e) of Section 13385.~~

35 (3) (A) *Notwithstanding paragraph (1), a failure to file a*
36 *discharge monitoring report is not a serious violation for purposes*
37 *of subdivision (h) of Section 13385 if the discharger submits a*
38 *written statement to the state board or the regional board that*
39 *includes both of the following:*

1 (i) A statement that there were no discharges to waters of the
2 United States during the relevant monitoring period.

3 (ii) The reason or reasons the required report was not submitted
4 to the regional board by the deadline for filing that report.

5 (B) If, in a statement submitted pursuant to subparagraph (A),
6 the discharger willfully states as true any material fact that he or
7 she knows to be false, that person shall be subject to a civil penalty
8 not exceeding ten thousand dollars (\$10,000). Any public
9 prosecutor may bring an action for a civil penalty under this
10 subparagraph in the name of the people of the State of California,
11 and the penalty imposed shall be enforced as a civil judgment.

12 (C) Notwithstanding subparagraph (A), the failure to file a
13 discharge monitoring report is subject to penalties in accordance
14 with subdivisions (c) and (e) of Section 13385.

15 (b) (1) Notwithstanding paragraph (1) of subdivision (a), a
16 mandatory minimum penalty shall be assessed pursuant to
17 subdivision (h) of Section 13385 only for each required report that
18 is not timely filed, and shall not be separately assessed for each
19 30-day period following the deadline for submitting the report, if
20 both of the following conditions are met:

21 (A) The discharger did not previously receive, from the state
22 board or a regional board, a notice of an enforcement action
23 imposing a mandatory minimum penalty pursuant to subdivision
24 (h) of Section 13385 for a failure to file a discharge monitoring
25 report in connection with the same waste discharge requirements.

26 (B) The discharges during the period or periods covered by the
27 report do not violate effluent limitations contained in waste
28 discharge requirements that include numeric waste discharge
29 requirements.

30 (2) Notwithstanding paragraph (1), the failure to file a discharge
31 monitoring report is subject to penalties in accordance with
32 subdivisions (c) and (e) of Section 13385.

33 (3) This subdivision shall become inoperative on January 1,
34 2016.

35 (c) (1) Notwithstanding any other provision of law, moneys
36 collected pursuant to this section for a failure to timely file a report,
37 as described in subdivision (a), shall be deposited in the State
38 Water Pollution Cleanup and Abatement Account.

39 (2) Notwithstanding Section 13340 of the Government Code,
40 the funds described in paragraph (1) are continuously appropriated,

SENATE RULES COMMITTEESB 1284

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1284

Author: Ducheny (D)

Amended: 6/2/10

Vote: 21

SENATE ENV. QUALITY COMMITTEE: 7-0, 4/19/10

AYES: Simitian, Runner, Corbett, Hancock, Lowenthal, Pavley, Strickland

SENATE APPROPRIATIONS COMMITTEE: 10-0, 5/27/10AYES: Kehoe, Alquist, Corbett, Denham, Leno, Price, Walters, Wolk,
Wyland, Yee

NO VOTE RECORDED: Cox

SUBJECT: Water quality: mandatory minimum civil penalties**SOURCE**: Association of California Water Agencies
Regional Council for Rural Counties

DIGEST: This bill provides that certain violations involving the failure to file a discharge monitoring report with the State Water Resources Control Board or a Regional Water Quality Control Board are not subject to existing mandatory minimum penalties if certain requirements are met. This bill provides that a failure to file a discharge monitoring report is not a serious waste discharge violation if the discharger submits a specified statement to the regional board. The bill, until January 1, 2016, requires, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report. This bill also extends the time limit under which dischargers must come into compliance with a permit requirement from five years to ten years.

CONTINUED

ANALYSIS:

Existing law, under the Porter-Cologne Water Quality Control Act:

1. Provides that any person who violates prescribed provisions of the Clean Water Act or the Porter-Cologne Water Quality Control Act is subject to civil liability, and sets requirements for determining the amount of any liability.
2. Requires a mandatory minimum penalty (MMP) of \$3,000 to be assessed for each serious violation, under certain circumstances.
3. Authorizes the State Water Resources Control Board (SWRCB) or a regional water quality control board (RWQCB), in lieu of assessing all or a portion of the MMP, to require a publicly-owned treatment works (POTW) serving a small community to spend an equivalent amount towards the completion of a compliance project proposed by the POTW if the POTW or SWRCB makes certain findings (e.g., compliance project is designed to correct the violations within five years, compliance project is consistent with SWRCB enforcement policy, POTW has prepared a financing plan to complete the compliance project).
4. Provides that for purposes of #3, a "POTW serving a small community" serves a population of 10,000 or fewer or a rural county, with a financial hardship as determined by the SWRCB after considering such factors as median income of the residents, rate of unemployment, or low population density.
5. Provides an exception to the imposition of MMPs for a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. For the purposes of the exception, a time schedule cannot exceed five years, except under certain conditions.

Mandatory minimum penalties. MMPs were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code Section 13385(h) requires an MMP of \$3,000 for each "serious" violation.

CONTINUED

The Water Boards are also required by California Water Code §13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six-consecutive months: (1) Violates effluent limitations, (2) Fails to file a report of waste discharge or file an incomplete report, or (3) Violates a toxicity effluent limitation where the waste discharge requirement does not contain pollutant-specific effluent limitations for toxic pollutants.

This bill

1. Revises current law to allow a regional board, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
2. Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a “serious violation” that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. This bill states that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties.
3. Provides, on a one-time basis only, that where a discharger has not previously received notification from the state or regional board of an enforcement action imposing mandatory minimum penalties and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. After this one-time fine, a discharger who subsequently fails to file such a report will be fined in accordance to current law. The bill states that regardless of whether the failure to file such reports is subject to the one-time relief provided, the failure to file the required report(s) may be subject to discretionary penalties.

4. Provides that the amendments made to that section applies to dischargers who currently have outstanding notices of violation as of the effective date of the act.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee analysis, because the bill exempts some violations from mandatory minimum penalties, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

SUPPORT: (Verified 6/2/10)

Association of California Water Agencies (co-source)
Regional Council of Rural Counties (co-source)
California Association of Sanitation Agencies
California Chamber of Commerce
California Special Districts Association
California State Association of Counties
California Water Association
City of Camarillo
Crescenta Valley Water District
El Dorado Irrigation District
Inland Empire Utilities Agency
Lake Berryessa Resort Improvement District
League of Cities
Napa Berryessa Resort Improvement District
Napa County
Pico Water District

OPPOSITION: (Verified 6/2/10)

California Coast Keeper Alliance
Sierra Club

ARGUMENTS IN SUPPORT: According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the statute is currently drafted; the definition of a “serious violation” warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties.

CONTINUED

The sponsor asserts that this bill provides that certain violations involving the failure to file a discharge monitoring report for no discharges or discharges that do not reach regulated level are not subject to those MMPs.

According to the Association of California Water Agencies (ACWA), there are several public agency members with permits requiring reporting which believe that they have received excessive, disproportionate fines for a simple failure to file the report. ACWA sites an example of one small water agency fine that is in excess of \$600,000.

ARGUMENTS IN OPPOSITION: Opponents state that exemptions in this bill from the MMP provisions of the Water Code for dischargers who fail to file required discharge monitoring reports send a message to the dischargers that these reports need not be filed – when in fact it is a condition of their permits. These permits are critical to tracking compliance with state and federal water quality laws.

TSM:do 6/2/10 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

Date of Hearing: June 15, 2010

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Pedro Nava, Chair
SB 1284 (Ducheny) - As Amended: June 2, 2010

SENATE VOTE : 31-0

SUBJECT : Water code permit violations.

SUMMARY : Exempts certain violations of waste discharge reporting requirements from existing mandatory minimum penalties (MMPs). Extends the time limit under which dischargers must come into compliance with a permit requirement from five years to ten years. Specifically, this bill :

1. Revises current law to allow a Regional Water Quality Control Board (RWQCB), after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
2. Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file.
3. Provides that where a discharger has not previously received notification from the State Water Resources Control Board (SWRCB) or a RWQCB of an enforcement action imposing MMP and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. Provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. Sunsets this provision on January 2016.
4. Provides that the limitations on MMPs created by this bill

would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act. _

EXISTING LAW :

- 1) Authorizes, under The Porter-Cologne Water Quality Act, SWRCB and the RWQCBs to set waste discharge requirements.
- 2) Provides for the imposition of civil penalties, including an MMP of \$3,000 for each serious waste discharge violation. The penalties may be issued administratively by the SWRCB or the RWQCB or through the superior court. This may be in addition to other penalties and fees.

FISCAL EFFECT : According to the Senate Appropriations Committee analysis, because the bill exempts some violations from MMPs, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

COMMENTS :

- 1) Need for the bill . According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The sponsor asserts that SB 1284 would provide that certain violations involving the failure to file a discharge monitoring report for no discharges or legal discharges should not be subject to those MMPs.

2)Mandatory minimum penalties (MMPs) were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code section 13385(h) requires an MMP of \$3,000 for each "serious" violation.

- a) The SWRCB and the RWQCBs are also required by Water Code section 13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in

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any period of six consecutive months:

- b) Violates effluent limitations;
c) Fails to file a report of waste discharge or file and incomplete report; or
d) Violates a toxicity effluent limitation where the WDR does not contain pollutant-specific effluent limitations for toxic pollutants.

3)MMPs for failure to report . The MMP statute was designed to address the failure of the SWRCB and the RWQCBs to enforce reporting requirements waste for discharge permits. In 2003, the Legislature strengthened the MMP laws by specifically adding waste discharge reporting failures to the MMP (AB 1541 - Montanez, Chapter 609, Statutes of 2003). The 2003 provisions were added to the statute when it was found that only 1% of over 4000 reporting violations were subject to the existing penalties.

4)The Pico Water District case . The proponents of this bill have cited the penalties assessed against the Pico Water District for failure to file 16 separate reports from 2005 to 2008 for discharges from wells into the San Gabriel River. The Pico Water District has asserted that because of changes in management at the district, as well as changes in their consulting engineering firm, they were unaware of the need to submit reports as required by their discharge permits.

The total fine assessed in 2008 by the Los Angeles RWQCB was \$627,000. The fine resulted from the \$3,000 fine being charged for each reporting period that the required reports were not submitted over the 3 year period. In January of 2009 Pico Water District appealed the fine amount and has requested that the entire fine be removed. That appeal is current pending.

5)Related legislation. AB 25 (Gilmore) modifies MMP for small communities by increasing the size of the size of low income communities that are allowed to apply MMPs to the cost of remediation of the causes of water code violations. This legislation was held in the Senate Environmental Quality Committee. _

6)Double-referral to the Assembly Judiciary Committee . Should this measure be approved by this Committee, the do pass motion

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must include the action to re-refer the bill to the Assembly Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION :

Support

Association of California Water Agencies (co-source) _
Regional Council of Rural Counties (co-source)
California Association of Sanitation Agencies
California Chamber of Commerce
California Special Districts Association
California State Association of Counties
California Water Association
City of Camarillo
Crescenta Valley Water District
El Dorado Irrigation District
Inland Empire Utilities Agency
Lake Berryessa Resort Improvement District

League of Cities
Napa Berryessa Resort Improvement District
Napa County
Pico Water District

Opposition
California Coast Keeper Alliance
Sierra Club

Analysis Prepared by : Bob Fredenburg / E.S. & T.M. / (916)
319-3965

SENATE RULES COMMITTEE

SB 1284

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520

Fax: (916) 327-4478

Unfinished Business

~~THIRD READING~~

Bill No: SB 1284

Author: Ducheny (D)

Amended: ~~6/2/10~~ *6/20/10*

Vote: 21

SENATE ENV. QUALITY COMMITTEE: 7-0, 4/19/10

AYES: Simitian, Runner, Corbett, Hancock, Lowenthal, Pavley, Strickland

SENATE APPROPRIATIONS COMMITTEE: 10-0, 5/27/10

AYES: Kehoe, Alquist, Corbett, Denham, Leno, Price, Walters, Wolk,

Wyland, Yee

NO VOTE RECORDED: Cox

Senate Floor: 31-0, 6/3/10

Assembly Floor:

SUBJECT: Water quality: mandatory minimum civil penalties

SOURCE: Association of California Water Agencies
Regional Council for Rural Counties

DIGEST: This bill provides that certain violations involving the failure to file a discharge monitoring report with the State Water Resources Control Board or a Regional Water Quality Control Board are not subject to existing mandatory minimum penalties if certain requirements are met. This bill provides that a failure to file a discharge monitoring report is not a serious waste discharge violation if the discharger submits a specified statement to the regional board. The bill, until January 1, 2016, requires, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report. This bill also extends the time limit under which dischargers must come into compliance with a permit requirement from five years to ten years.

CONTINUED

Assembly amendments change the sunset date to January 1, 2014
and made technical ~~and~~ minor changes
from SB 1284
January 1, 2016
Page 2

ANALYSIS:

Existing law, under the Porter-Cologne Water Quality Control Act:

1. Provides that any person who violates prescribed provisions of the Clean Water Act or the Porter-Cologne Water Quality Control Act is subject to civil liability, and sets requirements for determining the amount of any liability.
2. Requires a mandatory minimum penalty (MMP) of \$3,000 to be assessed for each serious violation, under certain circumstances.
3. Authorizes the State Water Resources Control Board (SWRCB) or a regional water quality control board (RWQCB), in lieu of assessing all or a portion of the MMP, to require a publicly-owned treatment works (POTW) serving a small community to spend an equivalent amount towards the completion of a compliance project proposed by the POTW if the POTW or SWRCB makes certain findings (e.g., compliance project is designed to correct the violations within five years, compliance project is consistent with SWRCB enforcement policy, POTW has prepared a financing plan to complete the compliance project).
4. Provides that for purposes of #3, a "POTW serving a small community" serves a population of 10,000 or fewer or a rural county, with a financial hardship as determined by the SWRCB after considering such factors as median income of the residents, rate of unemployment, or low population density.
5. Provides an exception to the imposition of MMPs for a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. For the purposes of the exception, a time schedule cannot exceed five years, except under certain conditions.

Mandatory minimum penalties. MMPs were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code Section 13385(h) requires an MMP of \$3,000 for each "serious" violation.

CONTINUED

The Water Boards are also required by California Water Code §13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six-consecutive months: (1) Violates effluent limitations, (2) Fails to file a report of waste discharge or file and incomplete report, or (3) Violates a toxicity effluent limitation where the waste discharge requirement does not contain pollutant-specific effluent limitations for toxic pollutants.

This bill

1. Revises current law to allow a regional board, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
2. Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. This bill states that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties.
3. Provides, on a one-time basis only, that where a discharger has not previously received notification from the state or regional board of an enforcement action imposing mandatory minimum penalties and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. After this one-time fine, a discharger who subsequently fails to file such a report will be ~~fine~~ in accordance to current law. The bill states that regardless of whether the failure to file such reports is subject to the one-time relief provided, the failure to file the required report(s) may be subject to discretionary penalties.

Sunset January 1, 2014.

Fined

4. Provides that the amendments made to that section applies to ~~dischargers~~
~~who currently have outstanding notices of violation as of the effective~~
~~date of the act.~~

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee analysis, because the bill exempts some violations from mandatory minimum penalties, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

SUPPORT: (Verified 6/2/10)

Association of California Water Agencies (co-source)
 Regional Council of Rural Counties (co-source)
 California Association of Sanitation Agencies
 California Chamber of Commerce
 California Special Districts Association
 California State Association of Counties
 California Water Association
 City of Camarillo
 Crescenta Valley Water District
 El Dorado Irrigation District
 Inland Empire Utilities Agency
 Lake Berryessa Resort Improvement District
 League of Cities
 Napa Berryessa Resort Improvement District
 Napa County
 Pico Water District

OPPOSITION: (Verified 6/2/10)

~~California Coast Keeper Alliance~~
~~Sierra Club~~

ARGUMENTS IN SUPPORT: According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties.

Violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2011 without regard to the date on which the violations occurred.

The sponsor asserts that this bill provides that certain violations involving the failure to file a discharge monitoring report for no discharges or discharges that do not reach regulated level are not subject to those MMPs.

According to the Association of California Water Agencies (ACWA), there are several public agency members with permits requiring reporting which believe that they have received excessive, disproportionate fines for a simple failure to file the report. ACWA sites an example of one small water agency fine that is in excess of \$600,000.

ARGUMENTS IN OPPOSITION: Opponents state that exemptions in this bill from the MMP provisions of the Water Code for dischargers who fail to file required discharge monitoring reports send a message to the dischargers that these reports need not be filed – when in fact it is a condition of their permits. These permits are critical to tracking compliance with state and federal water quality laws.

TSM:do 6/2/10 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

Date of Hearing: June 29, 2010

ASSEMBLY COMMITTEE ON JUDICIARY
Mike Feuer, Chair
SB 1284 (Ducheny) - As Amended: June 23, 2010

PROPOSED CONSENT

SENATE VOTE : 31-0

SUBJECT : WATER CODE PERMIT VIOLATIONS: MANDATORY MINIMUM
PENALTY RULES

KEY ISSUE : SHOULD A DISCHARGER'S FAILURE TO FILE A DISCHARGE
REPORT NOT CONSTITUTE A 'SERIOUS VIOLATION' SUBJECTING THEM TO
MINIMUM MANDATORY PENALTIES, WHEN THE DISCHARGER DECLARES THAT
THERE WERE NO DISCHARGES AND STATES THE REASONS FOR THE FAILURE
TO FILE A DISCHARGE REPORT?

FISCAL EFFECT : As currently in print this bill is keyed fiscal.

SYNOPSIS

This non-controversial bill deals with various issues surrounding penalties involving water code permit violations. The bill provides that certain violations involving the failure to file a discharge monitoring report for waste discharge into state waterways are not subject to mandatory minimum penalties if certain requirements are met. This bill, until January 1, 2014, also requires, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report. Finally, the measure authorizes a Regional Water Quality Control Board (RWQCB), following a public hearing, to extend the time schedule under which waste dischargers must come into compliance with a permit requirement for an additional period not exceeding 5 years in length, under specified conditions. While earlier versions of the measure had opposition from environmental organizations, the latest amendments to the bill have removed such opposition, and the measure has had no "no" votes in the Legislature.

SUMMARY : Seeks to exempt certain violations of waste discharge

reporting requirements from existing mandatory minimum penalties (MMPs). Specifically, this bill :

- 1)Revises current law to allow a RWQCB, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations, and that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation.
- 2)Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. Provides that upon the request of the State Water Resources Control Board (SWRCB) or a RWQCB, the discharger may be required to support the written statement with additional explanation or evidence.
- 3)Provides that a discharger will only be subject to a total fine of \$3,000 per required report when (1) a discharger has not on any occasion previously received notification from the state board or a regional board of a complaint to impose liability arising from a failure to timely file a discharge monitoring report, a notice of violation for failing to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report in connection with its corresponding waste discharge requirements, and (2) where the current violation consists of failures to file discharge monitoring reports for reporting periods where

dischargers did not violate numeric effluent limitations. Provides that these provisions only apply to a discharger who files any discharge monitoring report within 90 days after the discharger receives written notice from the state board or a regional board, and pays the penalties assessed within 60 days of the receipt of written notice from the state board or a regional board. Provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. This provision would sunset on January 1, 2014.

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- 4) Provides that the limitations on MMPs created by this bill would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act. _

EXISTING LAW :

- 1) Authorizes, under The Porter-Cologne Water Quality Act, SWRCB and the RWQCBs to set waste discharge requirements.
- 2) Provides for the imposition of civil penalties, including an MMP of \$3,000 for each serious waste discharge violation. The penalties may be issued administratively by the SWRCB or the RWQCB or through the superior court. This may be in addition to other penalties and fees.

COMMENTS : According to the co-sponsors, the Association of California Water Agencies and the Regional Council of Rural Counties, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose.

However, the co-sponsors assert that the way the statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is too broad, and unreasonably exposes public agencies to vast penalties simply because they may have failed to file a report indicating they were not making discharges. The co-sponsors suggest that this measure will appropriately provide certain violations involving the failure to file a discharge monitoring report for no discharges or legal discharges should not be subject to those MMPs.

The proponents of this bill have cited the penalties assessed against the Pico Water District for failure to file 16 separate reports from 2005 to 2008 for discharges from wells into the San Gabriel River. The Pico Water District has asserted that because of changes in management at the district, as well as changes in their consulting engineering firm, they were unaware of the need to submit such reports as required by their discharge permits.

The total fine assessed in 2008 by the Los Angeles RWQCB was \$627,000. The fine resulted from the \$3,000 fine being charged for each reporting period that the required reports were not submitted over the 3 year period. In January of 2009 Pico Water District appealed the fine amount and has requested that the entire fine be removed. That appeal is currently pending.

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Mandatory minimum penalties . MMPs were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code section 13385(h) requires an MMP of \$3,000 for each "serious" violation.

The SWRCB and the RWQCBs are also required by Water Code section 13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six consecutive months:

- a) Violates effluent limitations;
- b) Fails to file a report of waste discharge or file an incomplete report; or
- c) Violates a toxicity effluent limitation where the WDR does not contain pollutant-specific effluent limitations for toxic pollutants.

The MMP statute was designed to address the failure of the SWRCB and the RWQCBs enforcement of reporting requirements waste for discharge permits. In 2003, the Legislature strengthened the MMP laws by specifically adding waste discharge reporting failures to the MMP (AB 1541 - Montanez, Chapter 609, Statutes of 2003). The 2003 provisions were added to the statute when it was found that only 1% of over 4,000 reporting violations were subject to the existing penalties.

Reasonable progress requirement to meet effluent limitations . A regional board is permitted to set effluent levels for dischargers, and to establish a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible and shall not exceed five years. However, this bill revises current law to allow a RWQCB, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations, and that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation. The reasonable progress amendment ensures that dischargers will be forced to actively attempt to comply with the effluent limitations in order to receive additional time in the event that five years

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proves insufficient to bring their operations into compliance.

When MMPs will not apply to a failure to file a report . The failure to file a discharge monitoring report for a reporting period in which no discharges occur will not constitute a "serious violation" that gives rise to mandatory minimum penalties under certain conditions. If the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file, they will not be subjected to MMPs. This bill does allow the state board or a regional board to require the discharger to support the written statement with additional explanation or evidence.

When MMPs will be limited to a one-time charge . The latest amendments to this bill will eliminate ongoing penalties for dischargers who fail to file a discharge report under certain conditions. A discharger will only be subject to a total fine of \$3,000 per required report when:

- (1) A discharger has not on any occasion previously received notification from the state board or a regional board of a complaint to impose liability arising from a failure to timely file a discharge monitoring report, a notice of violation for failing to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report in connection with its corresponding waste discharge requirements; and
- (2) Where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations.

The latest amendments to this bill stipulate that these provisions only apply to a discharger who files any discharge monitoring report within 90 days after the discharger receives written notice from the state board or a regional board, and pays the penalties assessed within 60 days of the receipt of written notice from the state board or a regional board. The bill provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. The amendment to this provision will accelerate the sunset date to January 2014 in an effort to encourage dischargers to pay assessed penalties and

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Page 6

eliminate the accrued backlog of dischargers who have failed to file discharge reports.

Limited application of these amendments . The latest amendments

to this bill make clear that the amendments to Water Code Section 13385.1 will only apply to violations for which an administrative civil liability complaint, or a judicial complaint has not been filed before July 1, 2010. Dischargers against whom one of the aforementioned complaints has been filed will not receive the benefits of the legislation.

PRIOR RELATED LEGISLATION : AB 1541 (Montanez) Chapter 609, Statutes of 2003, strengthened MMP laws by specifically adding waste discharge reporting failures to the MMP. _

REGISTERED SUPPORT / OPPOSITION :

Support

Association of California Water Agencies (co-source) _
Regional Council of Rural Counties (co-source)
California Association of Sanitation Agencies
California Chamber of Commerce
California Special Districts Association
California State Association of Counties
California Water Association
City of Camarillo
Crescenta Valley Water District
El Dorado Irrigation District
Inland Empire Utilities Agency
Lake Berryessa Resort Improvement District
League of Cities
Napa Berryessa Resort Improvement District
Napa County
Pico Water District

Opposition

None on file

Analysis Prepared by : Barry Jardini and Drew Liebert / JUD. /
(916) 319-2334

FILE COPY

Date of Hearing: June 29, 2010

ASSEMBLY COMMITTEE ON JUDICIARY
Mike Feuer, Chair
SB 1284 (Ducheny) – As Amended: June 23, 2010

PROPOSED CONSENT

SENATE VOTE: 31-0

SUBJECT: WATER CODE PERMIT VIOLATIONS: MANDATORY MINIMUM PENALTY RULES

KEY ISSUE: SHOULD A DISCHARGER'S FAILURE TO FILE A DISCHARGE REPORT NOT CONSTITUTE A 'SERIOUS VIOLATION' SUBJECTING THEM TO MINIMUM MANDATORY PENALTIES, WHEN THE DISCHARGER DECLARES THAT THERE WERE NO DISCHARGES AND STATES THE REASONS FOR THE FAILURE TO FILE A DISCHARGE REPORT?

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

SYNOPSIS

This non-controversial bill deals with various issues surrounding penalties involving water code permit violations. The bill provides that certain violations involving the failure to file a discharge monitoring report for waste discharge into state waterways are not subject to mandatory minimum penalties if certain requirements are met. This bill, until January 1, 2014, also requires, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report. Finally, the measure authorizes a Regional Water Quality Control Board (RWQCB), following a public hearing, to extend the time schedule under which waste dischargers must come into compliance with a permit requirement for an additional period not exceeding 5 years in length, under specified conditions. While earlier versions of the measure had opposition from environmental organizations, the latest amendments to the bill have removed such opposition, and the measure has had no "no" votes in the Legislature.

SUMMARY: Seeks to exempt certain violations of waste discharge reporting requirements from existing mandatory minimum penalties (MMPs). Specifically, this bill:

- 1) Revises current law to allow a RWQCB, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations, and that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation.
- 2) Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory

minimum penalties if the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. Provides that upon the request of the State Water Resources Control Board (SWRCB) or a RWQCB, the discharger may be required to support the written statement with additional explanation or evidence.

- 3) Provides that a discharger will only be subject to a total fine of \$3,000 per required report when (1) a discharger has not on any occasion previously received notification from the state board or a regional board of a complaint to impose liability arising from a failure to timely file a discharge monitoring report, a notice of violation for failing to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report in connection with its corresponding waste discharge requirements, and (2) where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations. Provides that these provisions only apply to a discharger who files any discharge monitoring report within 90 days after the discharger receives written notice from the state board or a regional board, and pays the penalties assessed within 60 days of the receipt of written notice from the state board or a regional board. Provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. This provision would sunset on January 1, 2014.
- 4) Provides that the limitations on MMPs created by this bill would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act.

EXISTING LAW:

- 1) Authorizes, under The Porter-Cologne Water Quality Act, SWRCB and the RWQCBs to set waste discharge requirements.
- 2) Provides for the imposition of civil penalties, including an MMP of \$3,000 for each serious waste discharge violation. The penalties may be issued administratively by the SWRCB or the RWQCB or through the superior court. This may be in addition to other penalties and fees.

COMMENTS: According to the co-sponsors, the Association of California Water Agencies and the Regional Council of Rural Counties, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the co-sponsors assert that the way the statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is too broad, and unreasonably exposes public agencies to vast penalties simply because they may have failed to file a report indicating they were not making discharges. The co-sponsors suggest that this measure will appropriately provide certain violations involving the failure to file a discharge monitoring report for no discharges or legal discharges should not be subject to those MMPs.

The proponents of this bill have cited the penalties assessed against the Pico Water District for failure to file 16 separate reports from 2005 to 2008 for discharges from wells into the San Gabriel River. The Pico Water District has asserted that because of changes in management at the district, as well as changes in their consulting engineering firm, they were unaware of the need to submit such reports as required by their discharge permits.

The total fine assessed in 2008 by the Los Angeles RWQCB was \$627,000. The fine resulted from the \$3,000 fine being charged for each reporting period that the required reports were not submitted over the 3 year period. In January of 2009 Pico Water District appealed the fine amount and has requested that the entire fine be removed. That appeal is currently pending.

Mandatory minimum penalties. MMPs were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code section 13385(h) requires an MMP of \$3,000 for each “serious” violation.

The SWRCB and the RWQCBs are also required by Water Code section 13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six consecutive months:

- a) Violates effluent limitations;
- b) Fails to file a report of waste discharge or file an incomplete report; or
- c) Violates a toxicity effluent limitation where the WDR does not contain pollutant-specific effluent limitations for toxic pollutants.

The MMP statute was designed to address the failure of the SWRCB and the RWQCBs enforcement of reporting requirements waste for discharge permits. In 2003, the Legislature strengthened the MMP laws by specifically adding waste discharge reporting failures to the MMP (AB 1541 – Montanez, Chapter 609, Statutes of 2003). The 2003 provisions were added to the statute when it was found that only 1% of over 4,000 reporting violations were subject to the existing penalties.

Reasonable progress requirement to meet effluent limitations. A regional board is permitted to set effluent levels for dischargers, and to establish a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible and shall not exceed five years. However, this bill revises current law to allow a RWQCB, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations, and that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation. The reasonable progress amendment ensures that dischargers will be forced to actively attempt to comply with the effluent limitations in order to receive additional time in the event that five years proves insufficient to bring their operations into compliance.

When MMPs will not apply to a failure to file a report. The failure to file a discharge monitoring report for a reporting period in which no discharges occur will not constitute a “serious violation” that gives rise to mandatory minimum penalties under certain conditions. If the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file, they will not be subjected to MMPs. This bill does allow the state board or a regional board to require the discharger to support the written statement with additional explanation or evidence.

When MMPs will be limited to a one-time charge. The latest amendments to this bill will eliminate ongoing penalties for dischargers who fail to file a discharge report under certain conditions. A discharger will only be subject to a total fine of \$3,000 per required report when:

- (1) A discharger has not on any occasion previously received notification from the state board or a regional board of a complaint to impose liability arising from a failure to timely file a discharge monitoring report, a notice of violation for failing to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report in connection with its corresponding waste discharge requirements; and
- (2) Where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations.

The latest amendments to this bill stipulate that these provisions only apply to a discharger who files any discharge monitoring report within 90 days after the discharger receives written notice from the state board or a regional board, and pays the penalties assessed within 60 days of the receipt of written notice from the state board or a regional board. The bill provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. The amendment to this provision will accelerate the sunset date to January 2014 in an effort to encourage dischargers to pay assessed penalties and eliminate the accrued backlog of dischargers who have failed to file discharge reports.

Limited application of these amendments. The latest amendments to this bill make clear that the amendments to Water Code Section 13385.1 will only apply to violations for which an administrative civil liability complaint, or a judicial complaint has not been filed before July 1, 2010. Dischargers against whom one of the aforementioned complaints has been filed will not receive the benefits of the legislation.

PRIOR RELATED LEGISLATION: AB 1541 (Montanez) Chapter 609, Statutes of 2003, strengthened MMP laws by specifically adding waste discharge reporting failures to the MMP.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies (co-source)
Regional Council of Rural Counties (co-source)
California Association of Sanitation Agencies
California Chamber of Commerce
California Special Districts Association
California State Association of Counties
California Water Association
City of Camarillo
Crescenta Valley Water District
El Dorado Irrigation District
Inland Empire Utilities Agency
Lake Berryessa Resort Improvement District
League of Cities
Napa Berryessa Resort Improvement District

Napa County
Pico Water District

Opposition

None on file

Analysis Prepared by: Barry Jardini and Drew Liebert / JUD. / (916) 319-2334

ASSEMBLY JUDICIARY COMMITTEE **MANDATORY INFORMATION WORKSHEET**

*******IMPORTANT NOTE*******

THIS FORM MUST BE FULLY COMPLETED AND HAND-DELIVERED TO THE COMMITTEE NO LATER THAN SEVEN (7) CALENDAR DAYS AFTER IT IS INITIALLY DELIVERED TO THE AUTHOR'S OFFICE. IF THE BILL HAS BEEN SET FOR HEARING, IT SHALL CONSTITUTE AN AUTHOR'S RESET IF A SATISFACTORY WORKSHEET OR OTHER REQUESTED INFORMATION HAS NOT BEEN TIMELY RECEIVED BY THE COMMITTEE.

ALL SUBSTANTIVE AUTHOR'S AMENDMENTS MUST BE HAND-DELIVERED TO THE COMMITTEE IN LEGISLATIVE COUNSEL FORM (ORIGINAL AND EIGHT COPIES) WITHIN SEVEN (7) CALENDAR DAYS PRIOR TO THE HEARING. FAILURE TO DO SO MAY RESULT IN AN AUTHOR'S RESET.

THE COMMITTEE RECORDS THE DATE THIS WORKSHEET IS DELIVERED, THE DATE IT IS RETURNED, AND THE DATE THE COMMITTEE RECEIVES AMENDMENTS.

PLEASE RETURN COMPLETED WORKSHEETS TO THE COMMITTEE BY EMAIL TO SABA.HASHMAT@ASM.CA.GOV. PLEASE ALSO HAND-DELIVER TWO (2) COPIES OF THIS WORKSHEET AND ANY SUPPORTING DOCUMENTS TO THE COMMITTEE.

ASSEMBLY JUDICIARY COMMITTEE, 1020 N Street (LOB), Room 104

Bill Number: 1284

Author: Senator Ducheny

**Author's staff person: KimCraig phone: 651-4040
e-mail:kim.craig@sen.ca.gov**

1. What do you see as the key issue(s) raised by the bill.

Existing law authorizes, under the Porter-Cologne Act, the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCB) to set waste discharge requirements. In addition, the law provides for the imposition of civil penalties, including Mandatory Minimum Penalties (MMPs) for \$3,000 for each serious waste discharge violation. The penalties can be issued administratively by the SWRCB or the RWQCB for through the Superior Court. This may be in addition to other penalties and fees. With the implementation of the MMP statute, failure to file reports, including when no discharge occurred, carries with it the same penalty for those willfull polluters. There seems to be

2. Please provide a statement of the author's purpose for the bill, which may be used in the Committee's analysis, including *in detail* the problem or deficiency in the current law that the bill seeks to remedy, and how the bill resolves the problem.

MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the way the statute is currently drafted, the definition of "serious violation" warranting an imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The statute should be amended to provide for some flexibility on the filing of reports. These required reports are important, but the fines should be consistent with the action.

3. Who is the sponsor of the bill? If there is no sponsor, what person or entity requested that the bill be introduced? Please provide the name and telephone number of any sponsor or other person who may be contacted by the Committee for information regarding the bill.

Association of California Water Agencies (ACWA) and Regional Council of Rural Counties (RCRC).

*Ron Davis (ACWA) rdavis@acwa.com 916-441-4545
Kathy Mannion (RCRC) kmannion@rcrc.net 916-447-4806*

4. Please show the results of an Inquiry search regarding each similar and/or related bill (for example, same key words and/or code section) that has been introduced in this legislative session, or in any prior legislative session covered by the Inquiry system. (When using the Bill Search function in Inquiry, be sure to check the "all versions" button in the dialog box that appears after you choose the "word" search criterion.) Please include the bill number and year, a summary of the bill's contents, and the disposition of each bill.

1. *AB 1541 (Montanez) Chaptered, 2003. Included failure to file a report as a serious Violation subject to MMPs.*
2. *AB 25 (Gillmore) 2009. Held in Senate EQ. Changed the definition of a community that can be served by a POTW from 10,000 to 20,000 and allowed for any MMPs to be used toward future infrastructure improvements.*
3. *AB 913 (Logue) 2009. Returned to the Chief Clerk. Change the definition of serious violation to provide flexibility under the MMP statute.*
4. *AB 914 (Logue) 2009. Vetoed. Provided an additional standard for determining a financial hardship of a POTW in small or rural communities for which they are subject to MMPs.*

5. Please identify and summarize all similar or related pending federal legislation (see <http://thomas.loc.gov/home/thomas2.html>) and any bills or existing laws you are aware of in other states.

None

6. Please summarize and show the results (by citation) of a computer search regarding all existing California statutes (<http://www.leginfo.ca.gov/calaw.html>) and all existing federal statutes (<http://www4.law.cornell.edu/uscode/>) relevant to this bill. Please also indicate any relevant court decisions.

*Existing California Statutes
Watercode Sections 13385 and 13385.1*

7. Are the issues addressed by the bill the subject of pending litigation? If yes, please indicate the status of the pending litigation and how the bill would affect

the pending litigation. Please also provide the case citation and any relevant documents.

No

8. Have there been any informational hearings on the subject matter of the bill? If so, when? Please attach all information distributed by the Committee that held the hearing.

No

9. Please describe all amendments the author currently wishes to make before this bill is heard in Committee. (Please recall that amendments must be hand-delivered to the Committee in Leg Counsel form at least 7 calendar days before the bill is to be heard.)

10. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will properly address the problem. Please also attach copies of all such evidence and/or state where such material is available for reference by Committee counsel.

None

11. Please list all groups, agencies or persons that have contacted you in support or in opposition to the bill. Please attach copies of all letters of support and opposition.

Support

*Association of California Water Agencies (ACWA)-Co-Sponsor
Regional Council of Rural Counties (RCRC) Co-Sponsor
California Association of Sanitation Agencies
California Chamber of Commerce
California Special Districts Association
California State Association of Counties
California Water Association
City of Camarillo
Crescenta Valley Water District
El Dorado Irrigation District
Inland Empire Utilities Agency
Lake Berryessa Resort Improvement District
League of Cities
Napa Berryessa Resort Improvement District
Napa County
Pico Water District*

Opposition

*California Coastkeeper Alliance
Sierra Club*

12. Please describe any concerns that you anticipate may be raised in opposition to your bill, and state your response to those concerns.

Opposition says that the language, as currently drafted, in section 13385.1 (b)(1)(A) seems to allow for multiple opportunities for dischargers to obtain reduced penalties for failure to report to file discharge monitoring reports for different waste discharge requirements. It was not the intention to allow for multiple opportunities and amendments agreed to in ES&TM address this concern and tighten up the language to allow for first time offenders.

Secondly, the opposition raises concerns that once the State or Regional Board makes determination, there is no clarity on what happens if the discharger still fails to respond. We have agreed to a time limit on response from the discharger and then allowing Board to take further action.

13. Please list the name, organization and telephone number of all witnesses that you anticipate will testify in support or opposition to the bill. (Please note that the Committee limits the number of testifying witnesses to 2 per side. Additional witnesses may identify themselves for the record.)

Ron Davis (ACWA)-441-4545
Kathy Mannion (RCRC) 447-4806

**PLEASE REMEMBER TO EMAIL THIS COMPLETED WORKSHEET,
AND ALSO DROP OFF 2 HARD COPIES TO THE COMMITTEE.
TYPE AS DETAILED RESPONSES AS POSSIBLE. THANK YOU
VERY MUCH FOR YOUR ASSISTANCE.**

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE JUNE 2, 2010

AMENDED IN SENATE APRIL 26, 2010

SENATE BILL

No. 1284

Introduced by Senator Ducheny

February 19, 2010

An act to amend Sections 13385 and 13385.1 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as amended, Ducheny. Water quality: mandatory minimum civil penalties.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation or for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months, as prescribed. For purposes of the mandatory minimum penalty, a serious waste discharge violation includes a failure to file a specified discharge monitoring report for each complete period of 30 days following the deadline for submitting the report. Civil liability may be imposed administratively by the state board or a regional board, or those boards may request the Attorney General to petition the superior court to impose the liability.

~~This bill would provide that certain violations involving the failure to file a discharge monitoring report are not subject to those mandatory~~

~~minimum penalties if certain requirements are met. The bill would provide that a failure to file a discharge monitoring report is not a serious waste discharge violation if the discharger submits a specified statement to the *state board or the* regional board. The bill, until January 1, ~~2016~~ 2014, would require, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report.~~

(2) The state act includes within the exceptions to the imposition of those mandatory minimum penalties a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. The act prohibits, for the purposes of that exception, a time schedule order from exceeding 5 years in length, except as otherwise provided.

This bill, with a specified exception, would authorize a regional board, following a public hearing *and upon a showing that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation*, to extend the time schedule for an additional period not exceeding 5 years in length, under specified conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13385 of the Water Code is amended to
2 read:
3 13385. (a) A person who violates any of the following shall
4 be liable civilly in accordance with this section:
5 (1) Section 13375 or 13376.
6 (2) A waste discharge requirement or dredged or fill material
7 permit issued pursuant to this chapter or any water quality
8 certification issued pursuant to Section 13160.
9 (3) A requirement established pursuant to Section 13383.
10 (4) An order or prohibition issued pursuant to Section 13243 or
11 Article 1 (commencing with Section 13300) of Chapter 5, if the
12 activity subject to the order or prohibition is subject to regulation
13 under this chapter.

1 (3) An analysis of the effectiveness of current enforcement
2 policies, including mandatory minimum penalties.

3 (p) The amendments made to subdivisions (f), (h), (i), and (j)
4 during the second year of the 2001-02 Regular Session apply only
5 to violations that occur on or after January 1, 2003.

6 SEC. 2. Section 13385.1 of the Water Code is amended to read:

7 13385.1. (a) (1) For the purposes of subdivision (h) of Section
8 13385, a "serious violation" also means a failure to file a discharge
9 monitoring report required pursuant to Section 13383 for each
10 complete period of 30 days following the deadline for submitting
11 the report, if the report is designed to ensure compliance with
12 limitations contained in waste discharge requirements that contain
13 effluent limitations. This paragraph applies only to violations that
14 occur on or after January 1, 2004.

15 ~~(2) For the purposes of paragraph (1), a discharge monitoring~~
16 ~~report required pursuant to Section 13383 is not designed to ensure~~
17 ~~compliance with effluent limitations contained in waste discharge~~
18 ~~requirements if no discharges occur during the applicable reporting~~
19 ~~period.~~

20 ~~(3)~~

21 (2) (A) Notwithstanding paragraph (1), a failure to file a
22 discharge monitoring report is not a serious violation for purposes
23 of subdivision (h) of Section 13385 *at any time prior to the date*
24 *a discharge monitoring report is required to be filed or within 30*
25 *days after receiving written notice from the state board or a*
26 *regional board of the need to file a discharge monitoring report,*
27 *if the discharger submits a written statement to the state board or*
28 *the regional board that includes both of the following:*

29 (i) A statement that there were no discharges to waters of the
30 United States *reportable under the applicable waste discharge*
31 *requirements* during the relevant monitoring period.

32 (ii) The reason or reasons the required report was not submitted
33 to the regional board by the deadline for filing that report.

34 (B) *Upon the request of the state board or regional board, the*
35 *discharger may be required to support the statement with*
36 *additional explanation or evidence.*

37 ~~(B)~~

38 (C) If, in a statement submitted pursuant to subparagraph (A),
39 the discharger willfully states as true any material fact that he or
40 she knows to be false, that person shall be subject to a civil penalty

1 not exceeding ten thousand dollars (\$10,000). Any public
2 prosecutor may bring an action for a civil penalty under this
3 subparagraph in the name of the people of the State of California,
4 and the penalty imposed shall be enforced as a civil judgment.

5 ~~(C)~~

6 (D) Notwithstanding subparagraph (A), the failure to file a
7 discharge monitoring report is subject to penalties in accordance
8 with subdivisions (c) and (e) of Section 13385.

9 (b) (1) Notwithstanding paragraph (1) of subdivision (a), a
10 mandatory minimum penalty shall *continue to apply and shall* be
11 assessed pursuant to subdivision (h) of Section 13385, *but* only
12 for each required report that is not timely filed, and shall not be
13 separately assessed for each 30-day period following the deadline
14 for submitting the report, if both of the following conditions are
15 met:

16 (A) The discharger did not *on any occasion* previously receive,
17 from the state board or a regional board, ~~a notice of an enforcement~~
18 ~~action imposing a mandatory minimum penalty pursuant to~~
19 ~~subdivision (h) of Section 13385 for a failure to file a discharge~~
20 ~~monitoring report in connection with the same waste discharge~~
21 ~~requirements; a complaint to impose liability pursuant to~~
22 ~~subdivision (b) or (c) of Section 13385 arising from a failure to~~
23 ~~timely file a discharge monitoring report, a notice of violation for~~
24 ~~failure to timely file a discharge monitoring report, or a notice of~~
25 ~~the obligation to file a discharge monitoring report required~~
26 ~~pursuant to Section 13383, in connection with its corresponding~~
27 ~~waste discharge requirements.~~

28 (B) The discharges during the period or periods covered by the
29 report do not violate effluent limitations, *as defined in subdivision*
30 *(d)*, contained in waste discharge requirements ~~that include numeric~~
31 ~~waste discharge requirements.~~

32 (2) Paragraph (1) shall only apply to a discharger who does
33 both of the following:

34 (A) Files a discharge monitoring report that had not previously
35 been timely filed within 90 days after the discharger receives
36 written notice, including notice transmitted by electronic mail,
37 from the state board or regional board concerning the failure to
38 timely file the report.

39 (B) Pays all penalties assessed by the state board or regional
40 board in accordance with paragraph (1) within 60 days after the

1 *discharger receives written notice, including notice transmitted*
2 *by electronic mail, from the state board or regional board setting*
3 *forth the amount of the penalties.*

4 ~~(2)~~

5 (3) Notwithstanding paragraph (1), the failure to file a discharge
6 monitoring report is subject to penalties in accordance with
7 subdivisions (c) and (e) of Section 13385.

8 ~~(3)~~

9 (4) This subdivision shall become inoperative on January 1,
10 ~~2016~~ 2014.

11 (c) (1) Notwithstanding any other provision of law, moneys
12 collected pursuant to this section for a failure to timely file a report,
13 as described in subdivision (a), shall be deposited in the State
14 Water Pollution Cleanup and Abatement Account.

15 (2) Notwithstanding Section 13340 of the Government Code,
16 the funds described in paragraph (1) are continuously appropriated,
17 without regard to fiscal years, to the state board for expenditure
18 by the state board to assist regional boards, and other public
19 agencies with authority to clean up waste or abate the effects of
20 the waste, in responding to significant water pollution problems.

21 (d) For the purposes of this section, paragraph (2) of subdivision
22 (f) of Section 13385, and subdivisions (h), (i), and (j) of Section
23 13385 only, "effluent limitation" means a numeric restriction or
24 a numerically expressed narrative restriction, on the quantity,
25 discharge rate, concentration, or toxicity units of a pollutant or
26 pollutants that may be discharged from an authorized location. An
27 effluent limitation may be final or interim, and may be expressed
28 as a prohibition. An effluent limitation, for those purposes, does
29 not include a receiving water limitation, a compliance schedule,
30 or a best management practice.

31 (e) The amendments made to this section by Senate Bill 1284
32 of the 2009-10 Regular Session of the Legislature shall apply to
33 violations for which ~~penalties have not been imposed pursuant to~~
34 ~~Section 13385 before the effective date of those amendments; an~~
35 *administrative civil liability complaint or a judicial complaint has*
36 *not been filed before July 1, 2010*, without regard to the date on
37 which the violations occurred.

SENATE THIRD READING
 SB 1284 (Ducheny)
 As Amended June 23, 2010
 Majority vote

SENATE VOTE : 31-0 _

ENVIRONMENTAL SAFETY 9-0 JUDICIARY 10-0

| | |
|--|---|
| Ayes: Nava, Miller, Blakeslee, Chesbro, Davis, Feuer, Monning, Ruskin, Smyth | Ayes: Feuer, Tran, Brownley, Evans, Hagman, Huffman, Jones, Knight, Monning, Saldana |
|--|---|

APPROPRIATIONS 17-0

| |
|---|
| Ayes: Fuentes, Conway, Bradford, Huffman, Coto, Davis, De Leon, Gatto, Hall, Harkey, Miller, Nielsen, Norby, Skinner, Solorio, Torlakson, Torrico |
|---|

SUMMARY : Exempts certain Water Code violations of waste discharge reporting requirements from existing mandatory minimum penalties (MMPs). Extends the time limit under which dischargers must come into compliance with a permit requirement from five years to 10 years. Specifically, this bill :

- 1) Revises current law to allow a Regional Water Quality Control Board (RWQCB), after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of 10 years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
- 2) Provides that the failure to file a discharge monitoring

report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file.

- 3) Provides that where a discharger has not previously received notification from the State Water Resources Control Board (SWRCB) or a RWQCB of an enforcement action imposing MMPs and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. Provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. Sunsets this provision on January 2014.
- 4) Provides that the limitations on MMPs created by this bill would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act. _

EXISTING LAW provides for the imposition of civil penalties, including an MMP of \$3,000 for each serious waste discharge violation. The penalties may be issued administratively by the SWRCB or the RWQCB or through the superior court. This may be in addition to other penalties and fees.

FISCAL EFFECT : According to the Senate Appropriations Committee, because the bill exempts some violations from MMPs, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

COMMENTS :

- 1) Need for the bill. According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The sponsor asserts that SB

SB 1284

Page 3

1284 would provide that certain violations involving the failure to file a discharge monitoring report for no discharges or legal discharges should not be subject to those MMPs.

- 2) Mandatory minimum penalties (MMPs) were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code Section 13385(h) requires an MMP of \$3,000 for each "serious" violation.

- 3) MMPs for failure to report. The MMP statute was designed to address the failure of the SWRCB and the RWQCBs to enforce reporting requirements waste for discharge permits. In 2003, the Legislature strengthened the MMP laws by specifically adding waste discharge reporting failures to the MMP [AB 1541 (Montanez), Chapter 609, Statutes of 2003]. The 2003 provisions were added to the statute when it was found that only 1% of over 4000 reporting violations were subject to the existing penalties.

- 4) The Pico Water District case. The proponents of this bill have cited the penalties assessed against the Pico Water District for failure to file 16 separate reports from 2005 to 2008 for discharges from wells into the San Gabriel River. The Pico Water District has asserted that because of changes in management at the district, as well as changes in their consulting engineering firm, they were unaware of the need to submit reports as required by their discharge permits.

The total fine assessed in 2008 by the Los Angeles RWQCB was \$627,000. The fine resulted from the \$3,000 fine being charged for each reporting period that the required reports were not submitted over the 3 year period. In January of 2009 Pico Water District appealed the fine amount and has requested that the entire fine be removed. That appeal is current pending.

Analysis Prepared by : Bob Fredenburg / E.S. & T.M. / (916)
319-3965

FN: 0005942

8/16/10

SB 1284 (DUCHENY, D)

WATER QUALITY: MANDATORY MINIMUM CIVIL PENALTIES.

Version: 6/23/10 Last Amended

Vote: Majority

Support

Vice-Chair: Van Tran

Tax or Fee Increase: No

Provides regulatory relief to wastewater treatment plants with respect to the mandatory minimum penalties imposed for failure to file a discharge monitoring report.

Policy Question

1. Should the Legislature provide some regulatory relief to wastewater treatment facilities from expensive mandatory minimum penalties imposed by water quality control boards for failure to file a discharge monitoring report?
2. Should the Legislature allow a wastewater treatment plant more time to perform expensive upgrades to meet secondary treatment standards/effluent limitations?

Summary

This bill:

1. Upon a showing that the discharger is making diligent progress, allows a regional water quality control board to extend the time schedule for bringing waste discharges into compliance with effluent limits for an additional period of up to five years if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation.
2. Exempts from mandatory minimum penalties (MMPs) the failure to file a discharge monitoring report if the discharger submits a statement that there were no discharges during the monitoring period that were reportable under the applicable waste discharge requirement and the reason for failure to submit the report.

Senate Republican Floor Votes (31-0) 6/3/10

Ayes: All Senate Republicans except

Noes: None

Abs. / NV: Aanestad, Cogdill, Cox, Harman, Hollingsworth

Assembly Republican Toxics Votes (9-0) 6/15/10

Ayes: Miller, Blakeslee, Smyth

Noes: None

Abs. / NV: None

Assembly Republican Judiciary Votes (0-0) 6/22/10

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/09

Ayes: None

Noes: None

Abs. / NV: None

- a. Provides that the exemption shall apply to discharges at any time prior to the date that a discharge monitoring report is required to be filed or within 30 days after receiving written notice from a board of the need to file a discharge monitoring report.
 - b. Establishes a civil penalty of up to \$10,000 for willfully stating as true any material fact that is known to be false.
3. Provides that the MMP for failure to file a discharge monitoring report shall be assessed for each report that is not timely filed (and not for each 30-day period following the deadline for submitting the report) if both of the following conditions apply:
 - a. The discharger did not, on any occasion, previously receive a complaint to impose liability arising from failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report in connection with its waste discharge requirements.
 - b. The discharges during the periods covered do not violate effluent limitations contained in waste discharge requirements
 - c. Provides that this alternative shall only apply to a discharger who files a discharge monitoring report within 90 days after receiving written notice and pay all penalties assessed by the board within 60 days after receiving notice.
 - d. Sunsets these provision on January 1, 2016.
 4. Provides that amendments made by this bill shall apply to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred.
 5. Makes other technical changes.

Support

Association of California Water Agencies; California Association of Sanitation Agencies; California Chamber of Commerce; California Special Districts Association; California State Association of Counties; California Water Association; City of Camarillo; Crescenta Valley Water District; El Dorado Irrigation District; League of California Cities; Pico Water District;

Assembly Republican Bill Analysis

Regional Council of Rural Counties; Walnut Valley Water District.

Opposition

California Coastkeeper Alliance; and Sierra Club California. [Both groups may no longer oppose as amended on 6/23/10].

Arguments In Support of the Bill

1. Existing law provides that a mandatory minimum penalty of \$3,000 must be assessed against wastewater treatment plants for each "serious violation," which generally includes any waste discharge violating specific effluent limitations or for failure to file a discharge monitoring report. Many of these violations are technical or minor, especially concerning failure to submit a discharge monitoring report, but are still subject to the mandatory minimum penalties.
2. As written, the law currently requires a \$3,000 penalty to be assessed for each 30 day period after a missed deadline to submit a discharge monitoring report. As such, if a facility is required to submit a report every quarter and fails to submit any reports for nine months, the penalties could amount to \$53,000, even if there were no violations of those wastewater effluent limitations.
 - a. The mandatory minimum penalty provisions were intended to draw prompt attention to wastewater violations and ensure that facilities be promptly brought back in compliance. Unfortunately, these violations can be assessed at any time, and many such penalties are allowed to accrue over several years before they are assessed on violators. Such actions have catastrophic consequences for small and rural communities that are often significantly challenged to find the resources to pay the expensive penalties.
3. This bill provides relief on a one-time basis by providing that the mandatory minimum penalties imposed shall only be imposed for each missing report, not for each missing report and each 30 day period a report is late, if specified conditions are met.
4. An incident highlighting the need to establish limits on the amount of penalties that can accrue for failure to file discharge monitoring report is as follows:

"A small mutual water company with approximately 246 homes was issued an MMP complaint for \$3.945 million for overdue reports from January 2004 through June 2007 under an expired NPDES permit even though the Company had moved its discharge to land instead of discharging to the lake as authorized. Although there were arguably only 40 reports overdue, the MMPs were applied to 1,314 "violations," which only

SB 1284 (Ducheny, D)

existed because, under the MMP law (Water Code section 13385.1), an MMP must be assessed for every month that a single report is overdue, therefore, compounded every month until the report is submitted." - California Association of Sanitation Agencies

5. This bill will also provide wastewater treatment plants with more flexibility to upgrade their facilities.

Arguments In Opposition to the Bill

Opponents had previously objected to providing relief to wastewater treatment plants. They have typically objected to any proposed changes to the mandatory minimum penalties and argue that the penalties are high in order to deter treatment plants from violating effluent limitations. They also have objected to providing more time for facilities to come into compliance with those discharge requirements, regardless of the cost of doing so.

Fiscal Effect

Unknown.

Comments

Existing Law:

1. The Regional Water Quality Control Boards prescribe wastewater discharge requirements in accordance with state and federal water quality requirements.
2. Establishes mandatory minimum penalties for specified wastewater discharge requirements as follows:
 - a. \$3,000 for each serious violation in which a Group II pollutant exceeds effluent limitations by 20% or a Group I pollutant exceeds effluent limitations by 40%.
 - b. \$3,000 for each violation when a person does any of the following four or more times in a six consecutive month period:
 - i. Violates a waste discharge requirement effluent limit.
 - ii. Fails to provide a waste discharge report.
 - iii. Files an incomplete waste discharge report.
 - iv. Violates a toxicity effluent limit contained in a waste discharge requirement that does not contain pollutant-specific effluent limits for toxic pollutants.
3. Provides that failure to file a discharge monitoring report is subject to the mandatory minimum penalty of \$3,000 for each complete period of 30 days following the report deadline.
4. Instead of assessing mandatory minimum penalties, in the case of a publicly owned treatment works facility serving a small community, the state or regional board may instead require it to spend an equivalent amount towards the completion of a compliance project designed to correct the violations within five years.

5. Allows portion of the penalty to be expended on a supplemental environmental project. If the penalty exceeds \$15,000, the amount that may be spent on a supplemental environmental project may not exceed \$15,000 plus 50% of the penalty amount that exceeds \$15,000.

Pollutants for which MMPs may be Imposed:

The following is a list of pollutants for which mandatory minimum penalties can be imposed when a wastewater treatment plant exceeds very specific effluent limits:

Group I Pollutants 40 CFR Section 123.45

Appendix A

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Policy Consultant: John Kennedy/Mark Redmond 6/25/2010

Fiscal Consultant:

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

Group II Pollutants 40 CFR Section 123.45

Appendix A

Metals

Other metals not specifically listed under Group I

Inorganic

Cyanide
Total Residual Chlorine

Organics

All organics are Group II except those specifically listed under Group I.

Date of Hearing: August 4, 2010

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

SB 1284 (Ducheny) - As Amended: June 23, 2010

| | |
|----------------------------|---------------|
| Policy Committee: | Environmental |
| Safety and Toxic Materials | Vote: 9-0 |
| Judiciary | 10-0 |

| | |
|------------------|-------------------------------|
| Urgency: No | State Mandated Local Program: |
| No Reimbursable: | No |

SUMMARY

This bill exempts certain waste discharge reporting violations from existing mandatory minimum penalties (MMPs). Specifically, this bill:

- 1) Provides that failure to file a discharge monitoring report for a reporting period in which no discharge occur does not constitute a "serious violation" triggering MMPs, if certain conditions are met.
- 2) Establishes a one-time \$3,000 fine per delinquent report for a discharger who has not received notice from the State Water Resources Control Board or a regional water quality control board of an enforcement action imposing MMPs and who has not violated effluent limitations. Subsequent reporting violations would be subject to the penalties described in current law. This provision would sunset January 1, 2014.
- 3) Allows a regional board to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of 10 years if the discharger can demonstrate additional time is necessary to comply with effluent limitations.

FISCAL EFFECT

- 1) Minor absorbable costs to the state water board and regional boards.

- 2) Potential loss of penalty revenue, likely in the hundreds of thousands of dollars. (Waste Discharge Permit Fund and Cleanup and Abatement Fund)

COMMENTS

1) Rationale . Supporters contend MMPs should apply to willful violators of waste discharge laws but not to entities, such as public agencies, that fail to file a report indicating no discharges occurred during a given period. These supporters describe this bill as maintaining the dissuasive effect of MMPs while providing fairer, less burdensome penalties on those who commit minor and technical violations.

2) Background

a) Maximum Minimum Penalties . MMPs were established in 1999 in response to concerns that the state and regional water boards were failing to enforce Water Code violations. Existing statute requires an MMP of \$3,000 for each "serious" violation. The state and regional water boards are also required to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six consecutive months: Violates effluent limitations; fails to file a report of waste discharge or file an incomplete report; or violates a toxicity effluent limitation where the report does not contain pollutant-specific effluent limitations for toxic pollutants.

b) The Case of Pico Union . Proponents cite the case of the Pico Union Water District as an example of the inordinate burden that can result from the imposition of MMPs. The

water district failed to file 16 separate reports from 2005 to 2008 for discharges into the San Gabriel River from wells. The Pico Union Water District asserts they were unaware of the need to submit such reports. As a result of district's failure to file the reports, the Los Angeles water board fined Pico Union \$627,000. In January of 2009 the water district appealed the fine amount and requested the entire fine be removed. That appeal is currently pending.

3)Support . This bill is supported by the Association of

SB 1284

Page 3

California Water Agencies (ACWA) and the Regional Council of Rural Counties (RCRC), who contend the statute requiring MMPs is too broad and can result in an inordinate burden on entities that have made relatively minor or technical violations of the water code.

4)There is no registered opposition to this bill.

Analysis Prepared by : Jay Dickenson / APPR. / (916) 319-2081

SB 1284 (DUCHENY, D)

WATER QUALITY: MANDATORY MINIMUM CIVIL PENALTIES.

Version: 8/20/10 Last Amended

Vote: Majority

Support

Vice-Chair: Jeff Miller

Tax or Fee Increase: No

Provides regulatory relief to wastewater treatment plants with respect to the mandatory minimum penalties imposed for failure to file a discharge monitoring report.

NOTE: As noted below in the Fiscal Analysis, this measure has MINOR STATE COSTS. The State Water Resources Control Board would incur minor, insignificant administrative costs resulting from this bill.

Policy Question

1. Should the Legislature provide some regulatory relief to wastewater treatment facilities from expensive mandatory minimum penalties imposed by water quality control boards for failure to file a discharge monitoring report?
2. Should the Legislature allow a wastewater treatment plant more time to perform expensive upgrades to meet secondary treatment standards/effluent limitations?

Summary

This bill:

1. Upon a showing that the discharger is making diligent progress, allows a regional water quality control board to extend the time schedule for bringing waste discharges into compliance with effluent limits for an additional period of up to five years if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation.
2. Exempts from mandatory minimum penalties (MMPs) the failure to file a discharge monitoring report if the discharger submits a statement that there were no discharges during the monitoring period that were reportable under

the applicable waste discharge requirement and the reason for failure to submit the report.

- a. Provides that the exemption shall apply to discharges at any time prior to the date that a discharge monitoring report is required to be filed or within 30 days after receiving written notice from a board of the need to file a discharge monitoring report.
 - b. Establishes a civil penalty of up to \$10,000 for willfully stating as true any material fact that is known to be false.
3. Provides that the MMP for failure to file a discharge monitoring report shall be assessed for each report that is not timely filed (and not for each 30-day period following the deadline for submitting the report) if both of the following conditions apply:
 - a. The discharger did not, on any occasion, previously receive a complaint to impose liability arising from failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report in connection with its waste discharge requirements.
 - b. The discharges during the periods covered do not violate effluent limitations contained in waste discharge requirements
 - c. Provides that this alternative shall only apply to a discharger who files a discharge monitoring report within 30 days after receiving written notice and pay all penalties assessed by the board within 30 days after an order is issued.
 - d. Sunsets these provision on January 1, 2016.
 4. Provides that amendments made by this bill shall apply to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred.
 5. Makes other technical changes.

Senate Republican Floor Votes (31-0) 6/3/10

Ayes: All Republicans Except

Noes: None

Abs. / NV: Aanestad, Cogdill, Cox, Harman, Hollingsworth

Assembly Republican Toxics Votes (9-0) 6/15/10

Ayes: Miller, Blakeslee, Smyth

Noes: None

Abs. / NV: None

Assembly Republican Judiciary Votes (10-0) 6/29/10

Ayes: Tran, Hagman, Knight

Noes: None

Abs. / NV: None

Assembly Republican Appropriations Votes (17-0) 8/12/10

Ayes: Conway, Harkey, Miller, Nielsen, Norby

Noes: None

Abs. / NV: None

Support

Association of California Water Agencies;
California Association of Sanitation Agencies;

Assembly Republican Bill Analysis

California Chamber of Commerce; California Special Districts Association; California State Association of Counties; California Water Association; City of Camarillo; Crescenta Valley Water District; El Dorado Irrigation District; League of California Cities; Pico Water District; Regional Council of Rural Counties; Walnut Valley Water District.

Opposition

None on file.

Arguments In Support of the Bill

1. Existing law provides that a mandatory minimum penalty of \$3,000 must be assessed against wastewater treatment plants for each "serious violation," which generally includes any waste discharge violating specific effluent limitations or for failure to file a discharge monitoring report. Many of these violations are technical or minor, especially concerning failure to submit a discharge monitoring report, but are still subject to the mandatory minimum penalties.
2. As written, the law currently requires a \$3,000 penalty to be assessed for each 30 day period after a missed deadline to submit a discharge monitoring report. As such, if a facility is required to submit a report every quarter and fails to submit any reports for nine months, the penalties could amount to \$53,000, even if there were no violations of those wastewater effluent limitations.
 - a. The mandatory minimum penalty provisions were intended to draw prompt attention to wastewater violations and ensure that facilities be promptly brought back in compliance. Unfortunately, these violations can be assessed at any time, and many such penalties are allowed to accrue over several years before they are assessed on violators. Such actions have catastrophic consequences for small and rural communities that are often significantly challenged to find the resources to pay the expensive penalties.
3. This bill provides relief on a one-time basis by providing that the mandatory minimum penalties imposed shall only be imposed for each missing report, not for each missing report and each 30 day period a report is late, if specified conditions are met.
4. An incident highlighting the need to establish limits on the amount of penalties that can accrue for failure to file discharge monitoring report is as follows:

"A small mutual water company with approximately 246 homes was issued an MMP complaint for \$3.945 million for overdue reports from January 2004 through June 2007 under an expired NPDES permit even though the Company had moved its discharge to land

SB 1284 (Ducheny, D)

instead of discharging to the lake as authorized. Although there were arguably only 40 reports overdue, the MMPs were applied to 1,314 "violations," which only existed because, under the MMP law (Water Code section 13385.1), an MMP must be assessed for every month that a single report is overdue, therefore, compounded every month until the report is submitted." -

California Association of Sanitation Agencies

5. This bill will also provide wastewater treatment plants with more flexibility to upgrade their facilities.

Arguments In Opposition to the Bill

Previous opponents objected to providing relief to wastewater treatment plants. They have typically objected to any proposed changes to the mandatory minimum penalties and argue that the penalties are high in order to deter treatment plants from violating effluent limitations. They also have objected to providing more time for facilities to come into compliance with those discharge requirements, regardless of the cost of doing so.

Fiscal Effect

MINOR STATE COSTS. The State Water Resources Control Board would incur minor, insignificant administrative costs resulting from this bill.

Comments

Existing Law:

1. The Regional Water Quality Control Boards prescribe wastewater discharge requirements in accordance with state and federal water quality requirements.
2. Establishes mandatory minimum penalties for specified wastewater discharge requirements as follows:
 - a. \$3,000 for each serious violation in which a Group II pollutant exceeds effluent limitations by 20% or a Group I pollutant exceeds effluent limitations by 40%.
 - b. \$3,000 for each violation when a person does any of the following four or more times in a six consecutive month period:
 - i. Violates a waste discharge requirement effluent limit.
 - ii. Fails to provide a waste discharge report.
 - iii. Files an incomplete waste discharge report.
 - iv. Violates a toxicity effluent limit contained in a waste discharge requirement that does not contain pollutant-specific effluent limits for toxic pollutants.
3. Provides that failure to file a discharge monitoring report is subject to the mandatory minimum penalty of \$3,000 for each complete period of 30 days following the report deadline.

Assembly Republican Bill Analysis

SB 1284 (Ducheny, D)

Pollutants for which MMPs may be Imposed:

The following is a list of pollutants for which mandatory minimum penalties can be imposed when a wastewater treatment plant exceeds very specific effluent limits:

Group I Pollutants 40 CFR Section 123.45

Appendix A

Oxygen Demand

Biochemical Oxygen Demand

Chemical Oxygen Demand

Total Oxygen Demands

Total Organic Carbon

Solids

Total Suspended Solids (Residues)

Total Dissolved Solids (Residues)

Nutrients

Inorganic Phosphorus Compounds

Inorganic Nitrogen Compounds

Detergents and Oils

MBAS

NTA

Oil and Grease

Other detergents or algicides

Minerals

Calcium

Chloride

Fluoride

Magnesium

Sodium

Potassium

Sulfur

Sulfate

Total Alkalinity

Total Hardness

Other Minerals

Metals

Aluminum

Cobalt

Iron

Vanadium

Group II Pollutants 40 CFR Section 123.45

Appendix A

Metals

Other metals not specifically listed under Group I

Inorganic

Cyanide

Total Residual Chlorine

Organics

All organics are Group II except those specifically listed under Group I.

Policy Consultant: John Kennedy/Mark Redmond 8/20/2010

Fiscal Consultant: Chris Holtz 8/20/10

SENATE THIRD READING
 SB 1284 (Ducheny)
 As Amended August 20, 2010
 Majority vote

SENATE VOTE : 31-0

ENVIRONMENTAL SAFETY 9-0 JUDICIARY 10-0

| | |
|--|---|
| Ayes: Nava, Miller, Blakeslee, Chesbro, Davis, Feuer, Monning, Ruskin, Smyth | Ayes: Feuer, Tran, Brownley, Evans, Hagman, Huffman, Jones, Knight, Monning, Saldana |
|--|---|

APPROPRIATIONS 17-0

| |
|---|
| Ayes: Fuentes, Conway, Bradford, Huffman, Coto, Davis, De Leon, Gatto, Hall, Harkey, Miller, Nielsen, Norby, Skinner, Solorio, Torlakson, Torrico |
|---|

SUMMARY : Exempts certain Water Code violations of waste discharge reporting requirements from existing mandatory minimum penalties (MMPs). Extends the time limit under which dischargers must come into compliance with a permit requirement from five years to 10 years. Specifically, this bill :

- 1) Revises current law to allow a Regional Water Quality Control Board (RWQCB), after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of 10 years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
- 2) Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur

does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file.

- 3) Provides that where a discharger has not previously received notification from the State Water Resources Control Board (SWRCB) or a RWQCB of an enforcement action imposing MMPs and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. Provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. Sunsets this provision on January 2014.
- 4) Provides that the limitations on MMPs created by this bill would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act.

EXISTING LAW provides for the imposition of civil penalties, including an MMP of \$3,000 for each serious waste discharge violation. The penalties may be issued administratively by the SWRCB or the RWQCB or through the superior court. This may be in addition to other penalties and fees.

FISCAL EFFECT : According to the Senate Appropriations Committee, because the bill exempts some violations from MMPs, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

COMMENTS :

1) Need for the bill. According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The sponsor asserts that SB 1284 would provide that certain violations involving the failure to file a discharge monitoring report for no

SB 1284

Page 3

discharges or legal discharges should not be subject to those MMPs.

2) Mandatory minimum penalties (MMPs) were established in 1999 in response to concerns over the SWRCB and RWQCBs failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code Section 13385(h) requires an MMP of \$3,000 for each "serious" violation.

3) MMPs for failure to report. The MMP statute was designed to address the failure of the SWRCB and the RWQCBs to enforce reporting requirements waste for discharge permits. In 2003, the Legislature strengthened the MMP laws by specifically adding waste discharge reporting failures to the MMP [AB 1541 (Montanez), Chapter 609, Statutes of 2003]. The 2003 provisions were added to the statute when it was found that only 1% of over 4000 reporting violations were subject to the existing penalties.

4) The Pico Water District case. The proponents of this bill have cited the penalties assessed against the Pico Water District for failure to file 16 separate reports from 2005 to 2008 for discharges from wells into the San Gabriel River. The Pico Water District has asserted that because of changes in management at the district, as well as changes in their consulting engineering firm, they were unaware of the need to submit reports as required by their discharge permits.

The total fine assessed in 2008 by the Los Angeles RWQCB was \$627,000. The fine resulted from the \$3,000 fine being charged for each reporting period that the required reports were not submitted over the 3 year period. In January of 2009 Pico Water District appealed the fine amount and has requested that the entire fine be removed. That appeal is current pending.

Analysis Prepared by : Bob Fredenburg / E.S. & T.M. / (916)
319-3965

FN: 0006341

SENATE THIRD READING
 SB 1284 (Ducheny)
 As Amended August 20, 2010
 Majority vote

SENATE VOTE: 31-0

| | | | |
|----------------------|-----|-----------|------|
| ENVIRONMENTAL SAFETY | 9-0 | JUDICIARY | 10-0 |
|----------------------|-----|-----------|------|

Ayes: Nava, Miller, Blakeslee, Chesbro,
 Davis, Feuer, Monning, Ruskin,
 Smyth

Ayes: Feuer, Tran, Brownley, Evans,
 Hagman, Huffman, Jones, Knight,
 Monning, Saldana

| | |
|----------------|------|
| APPROPRIATIONS | 17-0 |
|----------------|------|

Ayes: Fuentes, Conway, Bradford,
 Huffman, Coto, Davis, De Leon,
 Gatto, Hall, Harkey, Miller, Nielsen,
 Norby, Skinner, Solorio, Torlakson,
 Torrico

Of this bill
SUMMARY: Exempts certain Water Code violations of waste discharge reporting requirements from existing mandatory minimum penalties (~~MMPs~~). Extends the time limit under which dischargers must come into compliance with a permit requirement from five years to 10 years. Specifically, this bill:

- 1) Revises current law to allow a Regional Water Quality Control Board (RWQCB), after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of 10 years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
- 2) Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file.
- 3) Provides that where a discharger has not previously received notification from the State Water Resources Control Board (SWRCB) or a RWQCB of an enforcement action imposing MMPs and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. Provides that after this one-time fine, a discharger who subsequently fails to file the same report will be fined in accordance with the current law. Sunsets this provision on January 2014.
- 4) Provides that the limitations on MMPs created by this bill would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act.

EXISTING LAW provides for the imposition of civil penalties, including an MMP of \$3,000 for each serious waste discharge violation. The penalties may be issued administratively by the SWRCB or the RWQCB or through the superior court. This may be in addition to other penalties and fees.

FISCAL EFFECT: According to the Senate Appropriations Committee, because the bill exempts some violations from MMPs, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

COMMENTS:

- 1) Need for the bill. According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the statute is currently drafted; the definition of a “serious violation” warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The sponsor asserts that SB 1284 would provide that certain violations involving the failure to file a discharge monitoring report for no discharges or legal discharges should not be subject to those MMPs.
- 2) Mandatory minimum penalties (MMPs) were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code Section 13385(h) requires an MMP of \$3,000 for each “serious” violation.
- 3) MMPs for failure to report. The MMP statute was designed to address the failure of the SWRCB and the RWQCBs to enforce reporting requirements waste for discharge permits. In 2003, the Legislature strengthened the MMP laws by specifically adding waste discharge reporting failures to the MMP [AB 1541 (Montanez), Chapter 609, Statutes of 2003]. The 2003 provisions were added to the statute when it was found that only 1% of over 4000 reporting violations were subject to the existing penalties.
- 4) The Pico Water District case. The proponents of this bill have cited the penalties assessed against the Pico Water District for failure to file 16 separate reports from 2005 to 2008 for discharges from wells into the San Gabriel River. The Pico Water District has asserted that because of changes in management at the district, as well as changes in their consulting engineering firm, they were unaware of the need to submit reports as required by their discharge permits.

The total fine assessed in 2008 by the Los Angeles RWQCB was \$627,000. The fine resulted from the \$3,000 fine being charged for each reporting period that the required reports were not submitted over the 3 year period. In January of 2009 Pico Water District appealed the fine amount and has requested that the entire fine be removed. That appeal is current pending.

SENATE RULES COMMITTEE

SB 1284

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1284

Author: Ducheny (D)

Amended: 8/20/10

Vote: 21

SENATE ENV. QUALITY COMMITTEE: 7-0, 4/19/10

AYES: Simitian, Runner, Corbett, Hancock, Lowenthal, Pavley, Strickland

SENATE APPROPRIATIONS COMMITTEE: 10-0, 5/27/10

AYES: Kehoe, Alquist, Corbett, Denham, Leno, Price, Walters, Wolk,
Wyland, Yee

NO VOTE RECORDED: Cox

SENATE FLOOR: 31-0, 06/03/10

AYES: Alquist, Ashburn, Calderon, Cedillo, Corbett, Correa, Denham,
Ducheny, Dutton, Florez, Hancock, Huff, Kehoe, Leno, Liu, Lowenthal,
Negrete McLeod, Oropeza, Padilla, Pavley, Price, Romero, Runner,
Simitian, Steinberg, Strickland, Walters, Wolk, Wright, Wyland, Yee

NO VOTE RECORDED: Aanestad, Cogdill, Cox, DeSaulnier, Harman,
Hollingsworth, Wiggins, Vacancy, Vacancy

ASSEMBLY FLOOR: Not available

SUBJECT: Water quality: mandatory minimum civil penalties

SOURCE: Association of California Water Agencies
Regional Council for Rural Counties

DIGEST: This bill exempts certain Water Code violations of waste
discharge reporting requirements from existing mandatory minimum

CONTINUED

penalties. This bill also extends the time limit under which dischargers must come into compliance with a permit requirement from five years to 10 years.

Assembly Amendments change the sunset date from January 1, 2016 to January 2014 and make minor technical changes.

ANALYSIS:

Existing law, under the Porter-Cologne Water Quality Control Act:

1. Provides that any person who violates prescribed provisions of the Clean Water Act or the Porter-Cologne Water Quality Control Act is subject to civil liability, and sets requirements for determining the amount of any liability.
2. Requires a mandatory minimum penalty (MMP) of \$3,000 to be assessed for each serious violation, under certain circumstances.
3. Authorizes the State Water Resources Control Board (SWRCB) or a regional water quality control board (RWQCB), in lieu of assessing all or a portion of the MMP, to require a publicly-owned treatment works (POTW) serving a small community to spend an equivalent amount towards the completion of a compliance project proposed by the POTW if the POTW or SWRCB makes certain findings (e.g., compliance project is designed to correct the violations within five years, compliance project is consistent with SWRCB enforcement policy, POTW has prepared a financing plan to complete the compliance project).
4. Provides that for purposes of #3, a "POTW serving a small community" serves a population of 10,000 or fewer or a rural county, with a financial hardship as determined by the SWRCB after considering such factors as median income of the residents, rate of unemployment, or low population density.
5. Provides an exception to the imposition of MMPs for a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. For the purposes of the exception, a time schedule cannot exceed five years, except under certain conditions.

CONTINUED

Mandatory minimum penalties. MMPs were established in 1999 in response to concerns over the SWRCB and RWQCB failing to take enforcement actions against Water Code violations. According to the SWRCB, the California Water Code Section 13385(h) requires an MMP of \$3,000 for each "serious" violation.

The Water Boards are also required by California Water Code §13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six-consecutive months: (1) Violates effluent limitations, (2) Fails to file a report of waste discharge or file and incomplete report, or (3) Violates a toxicity effluent limitation where the waste discharge requirement does not contain pollutant-specific effluent limitations for toxic pollutants.

This bill

1. Revises current law to allow a regional board, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
2. Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. This bill states that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties.
3. Provides, on a one-time basis only, that where a discharger has not previously received notification from the state or regional board of an enforcement action imposing mandatory minimum penalties and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. After this one-time fine, a discharger who

CONTINUED

subsequently fails to file such a report will be fined in accordance to current law. The bill states that regardless of whether the failure to file such reports is subject to the one-time relief provided, the failure to file the required report(s) may be subject to discretionary penalties.

4. Provides that the amendments made to that section applies to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010 without regard to the date on which the violations occurred..
5. Sunsets January 1, 2014.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee analysis, because the bill exempts some violations from mandatory minimum penalties, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

SUPPORT: (Verified 8/25/10)

Association of California Water Agencies (co-source)
 Regional Council of Rural Counties (co-source)
 California Association of Sanitation Agencies
 California Chamber of Commerce
 California Special Districts Association
 California State Association of Counties
 California Water Association
 City of Camarillo
 Crescenta Valley Water District
 El Dorado Irrigation District
 Inland Empire Utilities Agency
 Lake Berryessa Resort Improvement District
 League of Cities
 Napa Berryessa Resort Improvement District
 Napa County
 Pico Water District

ARGUMENTS IN SUPPORT: According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the

CONTINUED

statute is currently drafted; the definition of a “serious violation” warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The sponsor asserts that this bill provides that certain violations involving the failure to file a discharge monitoring report for no discharges or discharges that do not reach regulated level are not subject to those MMPs.

According to the Association of California Water Agencies (ACWA), there are several public agency members with permits requiring reporting which believe that they have received excessive, disproportionate fines for a simple failure to file the report. ACWA sites an example of one small water agency fine that is in excess of \$600,000.

TSM:do 8/25/10 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

SENATE RULES COMMITTEE

SB 1284

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1284
Author: Ducheny (D)
Amended: 8/20/10
Vote: 21

SENATE ENV. QUALITY COMMITTEE: 7-0, 4/19/10

AYES: Simitian, Runner, Corbett, Hancock, Lowenthal, Pavley, Strickland

SENATE APPROPRIATIONS COMMITTEE: 10-0, 5/27/10

AYES: Kehoe, Alquist, Corbett, Denham, Leno, Price, Walters, Wolk,
Wyland, Yee

NO VOTE RECORDED: Cox

SENATE FLOOR: 31-0, 06/03/10

AYES: Alquist, Ashburn, Calderon, Cedillo, Corbett, Correa, Denham,
Ducheny, Dutton, Florez, Hancock, Huff, Kehoe, Leno, Liu, Lowenthal,
Negrete McLeod, Oropeza, Padilla, Pavley, Price, Romero, Runner,
Simitian, Steinberg, Strickland, Walters, Wolk, Wright, Wyland, Yee

NO VOTE RECORDED: Aanestad, Cogdill, Cox, DeSaulnier, Harman,
Hollingsworth, Wiggins, Vacancy, Vacancy

ASSEMBLY FLOOR: 77-0, 8/25/10 - See last page for vote

SUBJECT: Water quality: mandatory minimum civil penalties

SOURCE: Association of California Water Agencies
Regional Council for Rural Counties

DIGEST: This bill exempts certain Water Code violations of waste
discharge reporting requirements from existing mandatory minimum

CONTINUED

penalties. This bill also extends the time limit under which dischargers must come into compliance with a permit requirement from five years to 10 years.

Assembly Amendments change the sunset date from January 1, 2016 to January 2014 and make minor technical changes.

ANALYSIS:

Existing law, under the Porter-Cologne Water Quality Control Act:

1. Provides that any person who violates prescribed provisions of the Clean Water Act or the Porter-Cologne Water Quality Control Act is subject to civil liability, and sets requirements for determining the amount of any liability.
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3. Authorizes the State Water Resources Control Board (SWRCB) or a regional water quality control board (RWQCB), in lieu of assessing all or a portion of the MMP, to require a publicly-owned treatment works (POTW) serving a small community to spend an equivalent amount towards the completion of a compliance project proposed by the POTW if the POTW or SWRCB makes certain findings (e.g., compliance project is designed to correct the violations within five years, compliance project is consistent with SWRCB enforcement policy, POTW has prepared a financing plan to complete the compliance project).
4. Provides that for purposes of #3, a "POTW serving a small community" serves a population of 10,000 or fewer or a rural county, with a financial hardship as determined by the SWRCB after considering such factors as median income of the residents, rate of unemployment, or low population density.
5. Provides an exception to the imposition of MMPs for a violation of an effluent limitation if the waste discharge complies with a certain time schedule order and other requirements are met. For the purposes of the exception, a time schedule cannot exceed five years, except under certain conditions.

CONTINUED

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The Water Boards are also required by California Water Code §13385(i) to assess MMPs of \$3,000 for multiple chronic violations. This penalty applies when the discharger does any of the following four or more times in any period of six-consecutive months: (1) Violates effluent limitations, (2) Fails to file a report of waste discharge or file an incomplete report, or (3) Violates a toxicity effluent limitation where the waste discharge requirement does not contain pollutant-specific effluent limitations for toxic pollutants.

This bill

1. Revises current law to allow a regional board, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
2. Provides that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional board under penalty of perjury stating that in fact no discharges occurred and stating the reasons for the failure to file. This bill states that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties.
3. Provides, on a one-time basis only, that where a discharger has not previously received notification from the state or regional board of an enforcement action imposing mandatory minimum penalties and where the current violation consists of failures to file discharge monitoring reports for reporting periods where dischargers did not violate numeric effluent limitations, that discharger will be subject to a total fines of \$3,000 per required report. After this one-time fine, a discharger who

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subsequently fails to file such a report will be fined in accordance to current law. The bill states that regardless of whether the failure to file such reports is subject to the one-time relief provided, the failure to file the required report(s) may be subject to discretionary penalties.

4. Provides that the amendments made to that section applies to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010 without regard to the date on which the violations occurred..
5. Sunsets January 1, 2014.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee analysis, because the bill exempts some violations from mandatory minimum penalties, the bill is likely to reduce future penalty revenues. The amount of any potential penalty revenue loss is unknown.

SUPPORT: (Verified 8/25/10)

Association of California Water Agencies (co-source)
Regional Council of Rural Counties (co-source)
California Association of Sanitation Agencies
California Chamber of Commerce
California Special Districts Association
California State Association of Counties
California Water Association
City of Camarillo
Crescenta Valley Water District
El Dorado Irrigation District
Inland Empire Utilities Agency
Lake Berryessa Resort Improvement District
League of Cities
Napa Berryessa Resort Improvement District
Napa County
Pico Water District

ARGUMENTS IN SUPPORT: According to the sponsor, MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the sponsors feel that the way the

CONTINUED

statute is currently drafted; the definition of a "serious violation" warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties. The sponsor asserts that this bill provides that certain violations involving the failure to file a discharge monitoring report for no discharges or discharges that do not reach regulated level are not subject to those MMPs.

According to the Association of California Water Agencies (ACWA), there are several public agency members with permits requiring reporting which believe that they have received excessive, disproportionate fines for a simple failure to file the report. ACWA cites an example of one small water agency fine that is in excess of \$600,000.

ASSEMBLY FLOOR:

AYES: Adams, Ammiano, Anderson, Arambula, Bass, Beall, Bill Berryhill, Tom Berryhill, Block, Blumenfield, Bradford, Brownley, Buchanan, Caballero, Charles Calderon, Carter, Chesbro, Conway, Cook, Coto, Davis, De La Torre, De Leon, DeVore, Eng, Evans, Feuer, Fletcher, Fong, Fuller, Furutani, Gaines, Galgiani, Garrick, Gatto, Gilmore, Hagman, Hall, Harkey, Hayashi, Hernandez, Hill, Huber, Huffman, Jeffries, Jones, Knight, Lieu, Logue, Bonnie Lowenthal, Ma, Mendoza, Miller, Monning, Nava, Nestande, Niello, Nielsen, Norby, V. Manuel Perez, Portantino, Ruskin, Salas, Saldana, Silva, Skinner, Smyth, Solorio, Audra Strickland, Swanson, Torlakson, Torres, Torrico, Tran, Villines, Yamada, John A. Perez

NO VOTE RECORDED: Fuentes, Vacancy, Vacancy

TSM:do 8/26/10 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

Senate Floor: 31-0 (6/3/10)

(AYE: All Republicans, except; ABS: Aanestad, Cogdill, Cox, Harman, Hollingsworth)

Assembly Floor: Vote Not Available (//)

(AYE:; NO:; ABS:)

Vote requirement: 21

Version Date: 08/20/2010

Quick Summary

Assembly amendments adjusted the penalty provisions, allowed for waste dischargers to work in good faith on improving their processes on effluence management after a violation among other technical and clarifying changes.

Provides that certain violations involving the failure to file a discharge monitoring report is not a serious waste discharge violation if the discharger submits a specified statement to the State Water Resources Control Board (water board) or the regional water board. Requires until January 1, 2014, with respect to certain violations involving the failure to file a discharge monitoring report, the mandatory minimum penalty of \$3,000 to be assessed only for each required report that is not timely filed, and not for each 30-day period following the deadline for submitting the report.

Impact on Jobs: This bill will limit the onerous and often devastating financial damages that small, rural communities face when they unknowingly face penalties for incidental waste discharge into a local water source.

Fiscal Effect

MINOR STATE COSTS

This measure is estimated to impose minor and absorbable costs on the State Water Resources Control Board.

Fiscal Consultant: Rocel Bettencourt

Analysis

Arguments in Support:

The author argues that this bill will conform statute with the intended purpose of AB 1541, specifically that MMPs be assessed on "polluters that hide violations of the Clean Water Act from state authorities" (see *Related*

Legislation). MMP's were enacted into law and remain in place today as penalties for "serious" or "repeat" violations of end of pipe discharge limits. However, as currently written, the definition of "serious violation" warranting the imposition of an MMP is too broad and is severely punishing city and other wastewater facilities for non-serious violations. In a number of cases, cities that operate wastewater facilities and have simple paperwork violations (for non-discharge notifications) are seeing fines in the range of \$200,000 to as high as \$600,000. At a time when local agencies are working on shoe-string budgets, this kind of fine can fiscally devastate a local agency.

Allowing for more flexibility when assessing penalties for certain reporting violations is an appropriate step to keep mistakes or omissions in paperwork processing from being considered on the same level as actual water quality violations, which should rightfully take precedence in water quality protection. These penalties can accrue rather quickly and compound costs for these districts if not caught or discovered immediately.

Arguments in Opposition:

Opponents to this bill believe that the exemptions from MMP's for failing to file the proper discharge monitoring reports will impact the regional water boards' ability to protect water quality and will enable disregard for water safety. They are also opposed to increasing the schedule for compliance and suggest that each compliance period should be based upon a threat to water quality.

Other Issues:

Several bills were introduced in 2009 that addressed various issues surrounding the MMP provisions of the Water Code, but primarily focused on timing issues to limit imposition of such penalties. None of these bills addressed the issue by seeking exemptions from penalties for the above described failures to report.

The appeals process at the Water Board may determine whether there is an actual violation, but they can not waive mandatory minimum penalties if there is a violation, even if it is a technical violation. Further, there is a large backlog at the Water Board, not allowing them to properly address all of their violations, often stranded for several years.

Digest

Requires a time schedule of 10 years to make specified upgrades. Allows regional water board to extend the time schedule for an additional period not exceeding five years in length, if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation.

Exempts "serious violations" which occurred previous to January 1, 2004 with specified disclosures submitted to the Water Board, as specified.

Outlines provisions for declaring a failure to file a waste discharge monitoring report in which the stated reasons do not meet the standard of a "serious violation." Allows for a public prosecutor to bring civil action against any discharger who willfully falsifies a report.

Requires MMP to be assessed for each report, not for every 30 days that the report goes unsubmitted under certain circumstances, with specified provisions.

Sunsets certain provisions on January 1, 2014.

States that this bill will only apply to those violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred.

Background

Existing Law

The Regional Water Quality Control Boards prescribe wastewater discharge requirements in accordance with state and federal water quality requirements. The established mandatory minimum penalties for specified wastewater discharge requirements:

- a. \$3,000 for each serious violation in which a Group II pollutant exceeds effluent limitations by 20% or a Group I pollutant exceeds effluent limitations by 40%.
- b. \$3,000 for each violation when a person does any of the following four or more times in a six consecutive month period:
 - i. Violates effluent limit.
 - ii. Fails to provide a waste discharge report.
 - iii. Files incomplete waste discharge report.
 - iv. Violates a toxicity effluent limit contained in a waste discharge requirement that does not contain pollutant-specific effluent limits for toxic pollutants.

Instead of assessing mandatory minimum penalties, in the case of a publicly owned treatment works facility serving a small community, the state or regional board may instead require it to spend an equivalent amount towards the completion of a compliance project designed to correct the violations within five years.

This section of law defines a "publicly owned treatment works serving a small community" as serving a population of 10,000 persons or fewer or a rural county with a financial hardship determined by the state board. Further, current law allows the state or regional board to direct a portion of the penalty to be expended on a supplemental environmental project. If the penalty exceeds \$15,000, the amount that may be spent on a supplemental environmental project may not exceed \$15,000 plus 50% of the penalty amount that exceeds

\$15,000.

Compliance Schedules

Allowing up to 10 years of protection from MMPs pursuant to an enforcement order would be consistent with the SWRCB's compliance schedule policy, endorsed by USEPA, which allows compliance schedules of up to 10 years in permits at the regional water boards' discretion.

Related Legislation

AB 914 (Logue, 2009-Enrolled) requires the financing plan, with respect to wastewater discharge violations at publicly owned treatment works, to include the completion of the compliance project within 5 years. Allows State Water Resource Control Board to consider ratepayers' ability to pay penalties when other financial indicators do not adequately represent the range of economic circumstances of the community. This bill passed off the Assembly Floor: 77-0 (AYE: All Republicans) and off the Senate Floor 40-0 (AYE: All Republicans). The Governor subsequently vetoed the bill.

AB 24 (Gilmore, 2009) contains provisions allowing for larger communities to qualify for the allocation of penalty funds to make corrective actions at small community publicly owned treatment works (POTW). This bill was held in committee in favor of AB 914.

AB 1541 (Montanez, Chapter 609, Statutes of 2003) classified failure to submit certain reports regarding waste discharges as a "serious" violation, thereby subjecting those "offenders" to a \$3,000 mandatory minimum penalty for every 30-day period the report is delinquent. The bill passed off the Assembly Floor: 42-31 (NO: All Republicans)

AB 285 (Wayne, Chapter 498, Statutes of 2001) implemented a reporting system for sewage system operators so the state can keep track of sewage system overflows. This bill passed out of the Assembly 77-2 AYE: All Republicans, except; ABS: Runner). This bill passed out of the Senate 33-2 (AYE: All Republicans, except; ABS: Haynes, McClintock).

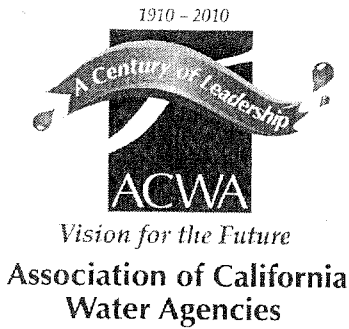
Support & Opposition Received

Support: Association of California Water Agencies (co-sponsor)
Regional Council of Rural Counties (co-sponsor)
California Association of Sanitation Agencies
California Chamber of Commerce
California Special Districts Association
California State Association of Counties
California Water Association
City of Camarillo
Crescenta Valley Water District
El Dorado Irrigation District

Inland Empire Utilities Agency
Lake Berryessa Resort Improvement District
League of California Cities
Napa Berryessa Resort Improvement District
Napa County Board of Supervisors
Pico Water District

Opposition: Clean Water Action (unless amended)
Sierra Club California (unless amended)

Senate Republican Policy Office/*Lance Christensen*



August 30, 2010

The Honorable Arnold Schwarzenegger
Governor
California State Senate
State Capitol
Sacramento, CA 95814

RE: Senate Bill No. 1284—Request for Signature

Dear Governor Schwarzenegger:

The Association of California Water Agencies (ACWA), is pleased to co-sponsor along with the Regional Council of Rural Counties and the California Chamber of Commerce SB 1284 (Ducheny), relating to water quality related mandatory minimum penalties.

Current law gives the State Water Resources Control Board (SWRCB) and the California Regional Water Quality Control Boards (Regional Board) the authority to prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. The Porter-Cologne Act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each “serious waste discharge violation.” Civil liability may be imposed administratively by the SWRCB or a regional board or those boards may request the Attorney General to petition the superior court to impose the liability.

MMPs are a deterrent and a punishment for willful violators, and should remain in place for that intended purpose. However, the way the statute is currently drafted the definition of a “serious violation” warranting the imposition of an MMP is far too broad and exposes public agencies who simply failed to file a report indicating no discharges to the vast penalties.

Section 13385.1(a)(3) of the bill provides that a violation involving the failure to file a discharge monitoring report for no discharges does not constitute a “serious violation” that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional water quality control board or state board under the penalty of perjury stating that no discharges occurred and giving reason for the failure of the discharger to file a required report. This amendment is intended to conform the statute to changes the State Water Resources Control Board has recently approved in its Water Quality Enforcement Policy. This section is also amended to state that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties.

In addition, in Section 13385.1(b), SB 1284 would add provisions to law that would allow for, on a one-time basis only, where a discharger has not previously received notification from the state or regional board of an enforcement action imposing mandatory minimum penalties and where the current violation consists of failures to file discharge monitoring reports for reporting periods where discharges did not violate numeric effluent limitations, that discharger will be subject to a total fine of \$3,000 per required report.

The Honorable Arnold Schwarzenegger
SB 1284 (Ducheny)
August 30, 2010
Page Two

For any reporting violations occurring after this one-time fine, a discharger who subsequently fails to file such a report will be fined in accordance with Section 13385(h). This section is also amended to state that regardless of whether the failure to file such reports is subject to the one-time relief provided, the failure to file the required report(s) may be subject to discretionary penalties.

Several of our respective public agency members operating under NPDES general permits requiring discharge monitoring reports have reported that they have received excessive, disproportionate fines for a simple failure to file the required report, either in instances where no discharges occurred, or where relatively minimal discharges occurred and those discharges did not violate any numeric effluent limitations. One small water agency's fine is in excess of \$600,000. While certain violations are appropriately viewed as serious, this case was merely a paperwork issue, and this bill would help prevent instances such as this, where significant mandatory penalties are imposed where no environmental harm has resulted, from further occurrence.

Further, the Legislature has recognized that it is unfair to penalize an agency that needs time to make capital improvements or operational changes before it can come into compliance. Existing law limits the relief that can be granted to a single 5 year period. Now, 10 years after passage of the original MMP law, this 5 year maximum timeframe presents issues. The first is that the SWRCB and United States Environmental Protection Agency (USEPA) have subsequently recognized that up to 10 years may be needed for compliance with increasingly stringent discharge requirements. The SWRCB's compliance schedule policy, endorsed by USEPA, allows compliance schedules of up to 10 years in permits at the regional water boards' discretion. In addition, due to a quirk of timing with the California Toxics Rule (CTR), some agencies have been allowed a total of 10 years to meet CTR requirements without incurring MMPs (5 years in the permit and 5 years in a compliance order) while others will get a shortened time to implement the same improvements because their permits were not issued until less than 5 years of in-permit compliance schedule authority remained. This proposal would revise statute to reflect the current State policy allowing up to 10 years if the discharger can demonstrate that additional time is necessary in order for them to reach compliance with effluent limitations.

Lastly, a provision is added as new subdivision (e) to Water Code Section 13385.1 to provide that the amendments made to that section would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act.

SB 1284 has been a result of a collaborative effort on the part of stakeholders, the Legislature, and others. For the above noted reasons, we are pleased to sponsor this bill and respectfully request your signature when it reaches your desk.

Sincerely,



Ronald L. Davis
Association of California Water Agencies



Kathy Mannion
Regional Council of Rural Counties



Valerie Nera
California Chamber of Commerce

cc: The Honorable Denise Ducheny



CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY

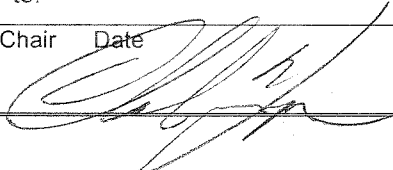
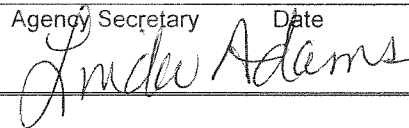
ENROLLED BILL
REPORT

CONFIDENTIAL-Government Code §6254(l)

| | | |
|--|--------------------|--|
| Department/Board: State Water Resources Control Board | Author: Ducheny | Bill Number/Version Date: SB 1284/Enrolled |
| Sponsor: Association of California Water Agencies & Regional Council of Rural Counties | Related Bill(s) | Chaptering Order (if known) |
| <input type="checkbox"/> Admin Sponsored Proposal No. | | <input type="checkbox"/> Attachment |
| Subject: Water quality: mandatory minimum civil penalties | | |

SUMMARY

This bill would make several revisions to the Mandatory Minimum Penalties (MMPs) statute. The bill would exempt dischargers from MMPs for failing to file a discharge monitoring report, if the dischargers file a written statement that no discharges to surface water occurred and the reasons they failed to file a report. The bill would also limit MMPs to a single \$3,000 penalty for each failure to timely file a discharge monitoring report in situations where: 1) the discharger had not previously received a complaint to impose penalties for failing to file a report from the State Water Resources Control Board (State Water Board) or a Regional Water Quality Control Board (Regions Water Board) (collectively referred to as the "Water Boards"), 2) the discharges to surface waters did not violate effluent limits, and (3) certain other conditions are met. The above mentioned provisions of the bill would apply to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, regardless of when the actual violations occurred, and the provisions would sunset on January 1, 2014. Finally, this bill would allow a Regional Water Board, after holding a public hearing, to extend the time schedule imposed in a cease and desist order or a time schedule order for an additional five years, to come into compliance with effluent limitations.

| | |
|--|--|
| Departments That May Be Affected State Water Board and Regional Water Boards | |
| <input type="checkbox"/> New / Increased Fee | <input type="checkbox"/> Governor's Appointment <input type="checkbox"/> Legislative Appointment |
| <input type="checkbox"/> Legislative Report | <input type="checkbox"/> Regulations Required |
| <input type="checkbox"/> State Mandate | <input type="checkbox"/> Urgency Clause |
| Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: | Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: |
| Director /Chair Date  9-3-2010 | Agency Secretary Date  9/9/10 |

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN. The State Water Board recommends that the Governor **sign** this bill. This bill improves the MMP statute by developing a more equitable manner of imposing MMPs on dischargers while upholding the intent of the statute. Specifically, the bill exempts dischargers from MMPs for failing to file a discharge monitoring report if the discharger submits a written statement to the appropriate Water Board indicating that there were no discharges to surface waters during the designated monitoring period and explaining the reasons they failed to file the report. This is consistent with the State Water Board Water Quality Enforcement Policy adopted in November 2009. Additionally, the bill makes the assessment of MMPs proportional to the violation by limiting MMP exposure to \$3,000 for a single missing report in very specific situations. These provisions of the bill make the MMP statute more equitable, while continuing to provide an incentive for dischargers to submit monitoring reports, and continuing to appropriately place the burden on the dischargers to submit discharge monitoring reports by retaining MMPs for failing to file a report.

Under the current MMP statute, a facility that fails to file a discharge monitoring report in a situation where there is no discharge to surface waters, must be assessed a MMP of \$3,000, for each complete period of 30 days following the deadline for submitting a report. Therefore, if a facility fails to file a single report over several 30 day periods after the due date, that facility could receive hundreds of thousands of dollars in MMPs in a situation where there is no discharge to surface waters, but simply a failure to file a single report stating no discharges occurred during the designated monitoring period. Additionally, under the current MMP statute, a facility that fails to file a discharge monitoring report in a situation where there is a discharge to surface waters, but that discharge does not violate effluent limitations, must be assessed a MMP of \$3,000 for each period of 30 days that the report is late. In other words, a facility that fails to file a single monitoring report over several 30 day periods after the due date, could receive hundreds of thousands of dollars in MMPs in a situation where a discharge occurred to surface waters that does not violate effluent limitations, but the facility simply failed to file a single report by the required deadline.

This bill continues to uphold the Legislative intent of the MMP statute, to ensure better reporting by dischargers who might otherwise avoid penalties for violations of their permits, by failing to submit monitoring reports that could disclose permit violations. The bill, however, provides exemptions that make the MMP statute more equitable in its approach to imposing MMPs for a discharger that fails to submit a discharge monitoring report.

The bill would apply somewhat retroactively to violations for which the Board has not filed an administrative civil liability (ACL) complaint or a judicial complaint enforcement action prior to July 1, 2010, regardless of when the actual violations occurred. These provisions would sunset on January 1, 2014.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to avoid unwarranted assessments of MMPs on local agencies that fail to file a report indicating no discharge occurred during a given monitoring period, or for a discharge that did not exceed effluent limitations contained in waste discharge requirements. The author argues that this bill would clarify the Legislative intent of Chapter 609, Statutes of 2003 (AB 1541 (Montanez)), that MMPs should be assessed on

“polluters that hide violations of the Clean Water Act from state authorities,” but not assessed as a means of punishing local agencies that fail to file a report for no discharge.

ANALYSIS

Existing law mandates the imposition of MMPs for specific violations of federal Clean Water Act permits, which are issued by the Water Boards. MMPs may be imposed administratively by the Water Boards or upon petition to the superior court by the Attorney General and at the request of the Water Boards. The law requires the issuance of MMPs in the amount of \$3,000 per violation for serious violations or for repeated violations (i.e. when four or more violations occur in a period of 180 consecutive days). A serious violation is defined as a violation that is at least 40 percent over the limit of a conventional pollutant and 20 percent over the limit of a toxic pollutant. Under current law, MMPs are assessed for failure to file a discharge monitoring report for each complete period of thirty days following the deadline for submitting that report to the Regional Water Board. Once monitoring and reporting for the requisite period is missed, the discharger cannot go back and recreate monitoring data to satisfy its reporting obligation. Because of this fact, MMPs for missing reports continue to be assessed and reassessed for each thirty day period following the deadline for submission until an ACL complaint for MMPs is issued by a Regional Water Board. In the past, the Regional Water Boards have had a backlog of MMP cases, and it has often taken several years for the Regional Water Board to assess an ACL complaint, resulting in the accumulation of significant penalties amounts for a single missing report. The law allows for the imposition of higher penalties for such violations, up to \$10,000 per day, but requires the MMP assessment of \$3,000 per violation for the serious and repeated violations. There is no statute of limitations for administratively imposing the MMPs.

Existing law exempts MMPs from being assessed for violations if a Regional Water Board adopts either a cease and desist order or a time schedule order to bring the waste discharge into compliance with effluent limitations. Under existing law a time schedule for bringing the discharge into compliance with effluent limitations may not exceed five years in length, except during an upgrade to required secondary treatment standards for Publicly Owned Treatment Works (POTWs) in Orange County under Water Code section 13385(j)(3)(C), when the time schedule may not exceed ten years in length.

This bill would make several revisions to the MMP statute. This bill would exempt dischargers from MMPs for failing to file a discharge monitoring report if the discharger submits a written statement to the State Water Board or Regional Water Board stating that no discharges to waters of the United States during the relevant monitoring period and the reasons they failed to file the report. The bill specifies that a discharger will be subject to civil penalties of up to \$10,000 for willfully making a false statement.

This bill also would limit the amount of MMPs for failing to file a discharge monitoring report to one \$3,000 MMP for each missing report if the following conditions are met: 1) the discharger discharges to surface water, but does not violate effluent limitations in waste discharge requirements that include numeric effluent limitations; and 2) the discharger did not on any occasion previously receive, from the State Water Board or a Regional Water Board a complaint, notice of violation, or notice of the obligation to file a discharge monitoring report under Water Code sections 13383 and 13385. Additionally, the discharger is required to: 1) file a monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice; and 2) pay all penalties assessed by the State Water

Board or a Regional Water Board within 30 days after the discharger receives an order to pay the penalties. This provision of the bill sunsets on January 1, 2014.

Further this bill allows Regional Water Boards to extend the time schedule imposed in a cease and desist order or a time schedule order for up to an additional five years. The bill requires the Regional Water Board to hold a public hearing before extending the time schedule order, and the discharger to show that it is making diligent progress toward bringing the waste discharge into compliance. The bill allows the time schedule for a POTW located in Orange County to be extended 10 years, without a public hearing.

Finally, this bill provides that provisions of the bill apply to violations for which an ACL complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date of the violations.

Comments

The State Water Board recommends that the Governor **SIGN** this bill. This bill improves the MMP statute by developing a more equitable manner of imposing MMPs on dischargers while upholding the intent of the statute. Specifically, the bill exempts a discharger from MMPs for failing to file a discharge monitoring report, if the discharger submits a written statement to the appropriate Water Board indicating that there were no discharges to surface waters during the designated monitoring period and explaining the reasons they failed to file the report. Additionally, the bill makes the assessment of MMPs proportional to the violation by limiting MMP exposure to \$3,000 for a single missing report in very specific situations. The provisions of the bill make the MMP statute more equitable, while continuing to provide an incentive for dischargers to submit monitoring reports, and continuing to appropriately place the burden on the dischargers to submit discharge monitoring reports by retaining MMPs for failing to file a report.

Exemption for Failure to File a Monitoring Report Where There Are No Discharges to Surface Waters. This bill creates a new exemption to MMPs for failing to file a discharge monitoring report, if no discharge to surface waters occurs. Under such circumstances, however, the bill requires an authorized representative of the discharger to submit a written statement to the State Water Board or a Regional Water Board that there were no discharges to the waters of the United States during the relevant monitoring period. The bill specifies that a discharger will be subject to civil penalties of up to \$10,000 for willfully making a false statement.

Under the current MMP statute, a facility that fails to file a discharge monitoring report in a situation where there is no discharge to surface waters, must be assessed MMPs at \$1,000, for each complete period of 30 days, following the deadline for submitting a report. Therefore, if a facility fails to file a single report for several 30 day periods, that facility could be fined hundreds of thousands of dollars in MMPs in a situation where there is no discharge to surface waters, but simply a failure to file a single report over the course of several 30 day periods.

The State Water Board supports this provision of the bill because it improves the MMP statute by developing a more equitable manner of imposing MMPs on dischargers that fail to file a discharge monitoring report in instances where there is no discharge. This provision of the bill is consistent with the State Water Board Water Quality Enforcement Policy adopted in

November 2009, and approved by Office of Administrative Law in May 2010.

Limit to \$3,000 the amount of MMPs that can accrue against a discharger for a single missing report under certain conditions. The State Water Board recognizes the need to improve the MMP statute, and therefore the Board supports the bill's provision to assist dischargers by limiting to \$3,000 the amount of MMPs that can accrue against a discharger for a single missing report, if the following conditions are met: 1) the discharger discharges to surface water, but does not violate effluent limitations in waste discharge requirements; and 2) the discharger did not on any occasion previously receive from the State Water Board or a Regional Water Board a complaint, notice of violation, or notice of the obligation to file a discharge monitoring report under WC sections 13383 and 13385. In order for this exemption to apply, the discharger is additionally required to: 1) file a monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by email from the Water Boards; and 2) pay all associated penalties assessed by the State Water Board or a Regional Water Board within 30 days after an order is issued to pay these penalties pursuant to section 13385.

Under the current MMP statute, a facility that fails to file a discharge monitoring report in a situation where there is a discharge to surface waters, but that discharge does not violate effluent limitations, must be assessed MMPs of \$3,000, for each 30 days that the report is late. Therefore, under current law, if a facility that fails to file a single monitoring report for several 30 day periods could be fined in hundreds of thousands of MMPs in a situation where a discharge occurred, that discharge did not violate effluent limitations, but the facility simply failed to file a single report over the course of several 30 day periods. This provision of the bill makes the MMP statute more equitable, while continuing to provide an incentive for dischargers to submit monitoring reports, and continuing to appropriately place the burden on the dischargers to submit discharge monitoring reports by retaining MMPs for failing to file a report.

Additionally, this provision of the bill will sunset on January 1, 2014. The sunset date to this provision allows for the continued incentive for dischargers to submit monitoring reports and continues to appropriately place the burden on the dischargers, rather than the Regional Water Boards, for submitting such reports in a timely manner by retaining MMPs for failing to file a report. The provision, however, also makes the assessment of MMPs proportional to the violation by limiting MMP exposure to \$3,000 for a single missing report so long as the discharger submits the missing report within 30 days of receiving written notice from the Water Boards of the failure to file the report and pays the associated penalty within 30 days of receiving written notice from the Water Boards of the penalty. Further, while this provision limits the amount of MMPs assessed against dischargers for a single missing report, the Water Boards continue to maintain the authority to impose ACL penalties pursuant to Water Code sections 13385(a)(3) and 13385(c) as needed.

The State Water Board notes that it is in the process of developing a program to voluntarily provide an electronic automated notification to dischargers when required self-monitoring reports are due, in order to avoid the submission of late reports. Board staff is scheduled to provide an information item to the Board in October 2010, to explain the program in more detail. However, the system being developed by the State Water Board would be used to provide a "courtesy notification" of a late report, and would retain the onus on the discharger to file the report.

LEGISLATIVE HISTORY**Current Session Legislation:**

None.

Previous Session Legislation:

AB 914 (Logue, 2009). This bill would have made changes to provisions of existing law that allow the Regional Water Boards to authorize POTWs serving small, disadvantaged communities to complete compliance projects in lieu of paying MMPs for water quality violations. This bill was vetoed by the Governor, who stated that "The bill is unnecessary since the Board already has the authority under current law to take any factor it deems appropriate into consideration when making a determination of financial hardship of a small community served by a POTW."

AB 2900 (La Malfa, 2008). This bill would have required the Water Boards to expeditiously take the appropriate action to assess the MMPs. This bill died in Assembly Environmental Safety and Toxic Materials Committee.

Chapter 725, Statutes of 2006 (AB 1752, Levine). This bill made two substantive changes to the provisions of SB 1733 (Aanestad). This bill: 1) delayed by six months the effective date of the entire "compliance project" provision of the MMP law under SB 1733; and 2) strengthens the fiscal standard that would apply to compliance projects under SB 1733.

Chapter 404, Statutes of 2006 (SB 1733, Aanestad). This bill made it easier for communities to participate in a program that allows them to improve their sewage treatment facilities as an alternative to paying MMPs. This law also declares that all parties to adjudicative proceedings, including public agencies, should be afforded fair and adequate proceedings, and requires, to the extent funding is made available, the State Water Board to provide annual training to Regional Water Board members for the purpose of improving adjudication processes.

Chapter 145, Statutes of 2005 (AB 495, Montanez). This bill made a technical change to MMP provisions to ensure that general National Pollutant Discharge Elimination System (NPDES) permit holders are subject to the same penalties for permit violations as individual permit holders. An inadvertent result of Chapter 609, Statutes of 2003 (AB 1541-Montanez) was that many general NPDES permit violations were exempted from MMP provisions. This bill corrected that error.

Chapter 609, Statutes of 2003 (AB 1541, Montanez). This bill classified a failure to file required discharge monitoring reports as a "serious violation" of waste discharge requirements, and thus subjects this violation to an MMP of \$3,000 for each complete 30-day period that a report is not submitted.

Chapter 995, Statutes of 2002 (AB 2351, Canciamilla). This bill allowed the Regional Water Boards, with the concurrence of the discharger, to direct a portion of an MMP to be expended on a supplemental environmental project. The law also required that violations of more than one pollutant parameter from a "single operational upset" of a biological treatment process be treated as a single violation.

Chapter 807, Statutes of 2000 (SB 2165, Sher). This bill modified Water Code Section 13385. Among other things, SB 2165 provided relief from MMPs for certain POTWs.

Chapter 947, Statutes of 1999 (SB 709, Committee on Budget and Fiscal Review). This bill established the Clean Water Enforcement and Pollution Prevention Act of 1999 and modified Water Code Section 13385 to require MMPs for specified effluent violations of NPDES permits.

Chapter 92, Statutes of 1999 (AB 1104, Migden). This bill required the Water Boards to prescribe effluent limitations as part of the waste discharge requirements of a POTW for specified substances. This bill required liability to be assessed for a violation of those provisions at a level that recovers the economic benefits derived from the acts that constitute the violation. It also required MMPs of \$3,000 to be assessed under prescribed circumstances. This bill required the State Water Board to report annually to the Legislature regarding its enforcement activities.

PROGRAM BACKGROUND

The mission of the Water Boards is to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations. The Water Boards are responsible for protecting and enforcing the many uses of water, including the needs of industry, agriculture, municipal districts, and the environment.

The five-member State Water Board protects water quality by setting statewide policy, coordinating and supporting Regional Water Boards' efforts, and reviewing petitions that contest Regional Water Board actions. The State Water Board is also solely responsible for allocating surface water rights. The joint authority of water allocation and water quality protection enables the State Water Board to provide comprehensive protection for California's waters. Each of the five full time salaried board members fills a different specialized position, representing the public, engineering expertise, water quality expertise and water supply. The members are appointed to four-year terms by the Governor and confirmed by the Senate.

There are nine Regional Water Boards. The nine Regional Water Boards are semi-autonomous and are comprised of nine part-time board members appointed by the Governor and confirmed by the Senate. Regional boundaries are based on the unique differences in climate, topography, geology and hydrology for each watershed. Each Regional Board makes critical water quality decisions for its region including setting standards, issuing waste discharge requirements determining compliance with those requirements, monitoring water quality, and taking appropriate enforcement action.

It is the policy of the State Water Board to protect and enhance the quality of the waters of the State by creating an enforcement system that addresses water quality problems in the most efficient, effective, and consistent manner. The State Water Board has recently updated its Water Quality Enforcement Policy, which provides guidance to Water Board staff, assisting them in utilizing limited resources in ways that openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits. It is the intent of the State Water Board that the Regional Water Boards' decisions be consistent

with this policy. The Water Quality Enforcement Policy seeks to address the enforcement component (i.e. actions that take place after a violation has been identified) of the Water Board regulatory framework, which is an equally critical element of a successful regulatory program. Without a strong enforcement program to back up the cooperative approach, the entire Water Board regulatory framework would be in jeopardy. Enforcement is a critical ingredient in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Appropriate penalties and other consequences for violations offer some assurance of equity between those who choose to comply with requirements and those who violate them. It also improves public confidence when government is ready, willing and able to back up its requirements with action and consequences.

OTHER STATES' INFORMATION

This bill is specific to California's Water Code enforcement provisions.

FISCAL IMPACT

This bill could result in unknown revenue loss by creating new exemptions to MMPs for failing to file a discharge monitoring report in certain situations. Under current law, the revenues from water quality penalties are deposited into the Cleanup and Abatement Account (CAA) and are used for cleaning up or abating unforeseen water pollution problems. By creating new exemptions to MMPs, this bill would result in reduced revenue from MMPs to the CAA for water quality improvement projects.

ECONOMIC IMPACT

This bill would allow certain communities in California that have received significant MMPs to reduce the amount owed by them to the State Water Board.

LEGAL IMPACT

None.

APPOINTMENTS

None.

SUPPORT/OPPOSITION

Support: Association of California Water Agencies & Regional Council of Rural Counties League of California Cities (co sponsors), California Association of Sanitation Agencies, California Chamber of Commerce, California Special Districts Association, California State Association of Counties, California Water Association, City of Camarillo, Crescenta Valley Water District, El Dorado Irrigation District, Inland Empire Utilities Agency, Lake Berryessa Resort Improvement District, League of Cities, Napa Berryessa Resort Improvement District, Napa County, Pico Water District

Opposition: None on file.

ARGUMENTS

Pro: This bill improves the MMP statute by developing a more equitable manner of imposing MMPs on dischargers while upholding the intent of the statute. This bill enables dischargers to avoid excessive assessments of MMPs for failing to file discharge monitoring reports where there is no adverse impact to water quality, by exempting dischargers from MMPs if they failed to file a report and (1) there was no discharge, (2) there was a discharge, but it didn't exceed effluent limitations.

Con: This bill does not go far enough to improve the MMP statute. This bill will not assist dischargers that were assessed an ACL complaint or a judicial complaint before July 1, 2010 for the same type of violations that are addressed by this bill (i.e. failed to file reports but where there was no adverse impact to water quality).

VOTES

| Votes | Date | Ayes | Noes | Abstaining or Absent |
|-----------------------|-----------------|------|------|-------------------------|
| Senate Concurrence | August 26, 2010 | 37 | 0 | 3 |
| Assembly Floor | August 25, 2010 | 77 | 0 | 3 |
| Senate Floor | June 3, 2010 | 31 | 0 | 9 |

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: August 20, 2010
 RECOMMENDATION: Sign

BILL NUMBER: SB 1284
 AUTHOR: D. Ducheny

ASSEMBLY: 77/0
 SENATE: 37/0

BILL SUMMARY: Water Quality

This bill will create exemptions to existing Mandatory Minimum Penalties (MMPs) statutes for the failure to file a discharge monitoring report if certain requirements are met. This bill also will extend the deadline by which a discharger must comply with an effluent limitation under prescribed situations.

FISCAL SUMMARY

The bill will result in no additional costs to the State Water Resources Control Board (Water Board). Creating new exemptions to the application of MMPs would likely result in an unknown amount of reduced revenue to the Cleanup and Abatement Account (CAA). The CAA is used to fund abatement activities at sites with water pollution issues where no responsible party is currently identified.

COMMENTS

The Department of Finance recommends that this bill be signed as it clarifies the intent of the existing statute that MMPs should be assessed on polluters who violate the Clean Water Act, but not assessed as a means of punishing local agencies that fail to file a report for no discharge.

Existing law requires the Water Board, with certain exceptions, to impose MMPs for waste discharge violations. This bill will result in the following changes to MMP regulations:

- Failure to file a discharge monitoring report for a period in which no discharge occurred will no longer be considered a "serious violation" leading to an MMP. A discharger will be required to report to a Regional Board the fact that no discharges occurred and the reasons for the discharger's failure to file.
- A discharger will only be subject to a single fine of \$3,000 for failure to file a discharge monitoring report if the following conditions are met: the discharge did not violate the discharger's numeric effluent limitations, the discharger did not receive a complaint or notice of the obligation to file a report, the discharger files a report within 30 days of receiving a notice, and the discharger pays all penalties assessed by the State or Regional Water Board after receiving a written notice.

Currently, a Regional Water Quality Control Board (Regional Board) may allow a discharger to comply with a time schedule order for bringing a waste discharge into compliance with effluent limitations. Existing law requires a time schedule that does not exceed five years. The bill will allow a Regional Board, following a public hearing, to extend the time schedule by up to five additional years upon verification that the discharger is making diligent progress toward compliance.

(Continued)

| | | | |
|---|-----------------|--------------------------------------|-----------------|
| Analyst/Principal (0633) K. DaRosa | Date 9/24/10 | Program Budget Manager Karen Finn | Date 9/19/10 |
| Department Director <i>[Signature]</i> | | Date 9/24/10 | |

ENROLLED BILL REPORT Form DF-43 (Rev 03/95 Pink)

BILL NUMBER

SB 1284

| Code/Department | SO | (Fiscal Impact by Fiscal Year) | | | | | | | |
|-------------------|-----------------------------------|--------------------------------|----|-----------|--------------------|-----------|----|-----------|------|
| Agency or Revenue | LA | (Dollars in Thousands) | | | | | | | |
| Type | CO | PROP | | | | | | | Fund |
| | RV | 98 | FC | 2010-2011 | FC | 2011-2012 | FC | 2012-2013 | Code |
| 1643/PenAssessm | RV | No | | ----- | See Fiscal Summary | ----- | | | 0679 |
| <u>Fund Code</u> | <u>Title</u> | | | | | | | | |
| 0679 | Water Quality Control Fund, State | | | | | | | | |

COMMITTEES

CHAIR, BUDGET AND FISCAL REVIEW
CHAIR, BUDGET AND FISCAL REVIEW
SUBCOMMITTEE #5
CHAIR, JOINT LEGISLATIVE BUDGET
JOINT LEGISLATIVE AUDIT
JOINT FAIRS, ALLOCATION &
CLASSIFICATION
LABOR AND INDUSTRIAL RELATIONS
PUBLIC EMPLOYMENT AND RETIREMENT

California State Senate

SENATOR

DENISE MORENO DUCHENY

FORTIETH SENATE DISTRICT



SELECT COMMITTEES

CHAIR, CALIFORNIA-MEXICO
COOPERATION
CHAIR, COLORADO RIVER
STATE SCHOOL FACILITIES
BOARDS
CALIFORNIA WORKFORCE
INVESTMENT
STATE PUBLIC WORKS

September 3, 2010

The Honorable Arnold Schwarzenegger
Governor
State of California
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

I respectfully request your signature on Senate Bill 1284. SB 1284 would conform statute with the intended purpose of AB 1541, specifically that minimum mandatory penalties (MMPs) that continually accrue at the rate of \$3,000 per month for each reporting period be assessed on "polluters that hide violations of the Clean Water Act from state authorities." The current definition of "serious violation" extends to local agencies with discharge permits that simply fail to file a report indicating they have no discharges or minimal or non-harmful discharges that do not meet state-set contamination levels. Changes to statute are necessary, therefore, to prevent unwarranted significant assessments for minor paperwork violations, including those imposed in recent years.

Specifically, this bill does the following:

- 1) Current law is revised to allow a regional board, after a public hearing, to extend the time schedule for bringing a waste discharge into compliance for an additional five years, to a possible total time schedule of ten years if the discharger can demonstrate that additional time is necessary in order to reach compliance with effluent limitations.
- 2) In Section 2 of the bill, Section 13385.1(a)(2) is amended to provide that the failure to file a discharge monitoring report for a reporting period in which no discharges occur does not constitute a "serious violation" that gives rise to mandatory minimum penalties if the discharger submits a written statement to the appropriate regional board stating that in fact no discharges occurred and stating the reasons for the failure to file. The amendments provide for civil penalties of up to \$10,000 if false statements on those issues are willfully submitted.

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STATE CAPITOL, ROOM 5035
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637 3RD AVENUE, SUITE A-1
CHULA VISTA, CA 91910
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Governor Arnold Schwarzenegger
September 3, 2010
PAGE TWO

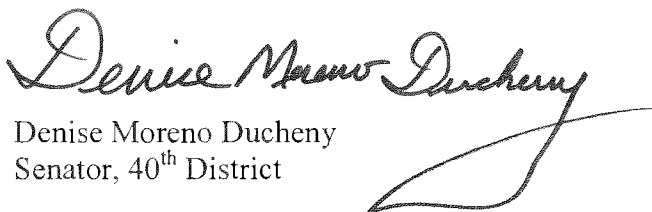
Water Code Section 13385.1 is also amended to state that regardless of whether mandatory minimum penalties apply to the failure to file a discharge monitoring report for a reporting period in which no discharges occur, the failure to file such a report may be subject to discretionary penalties under the existing provisions of subdivisions (c) and (e) of Water Code Section 13385. Those discretionary penalty provisions require the regional board to take into account numerous factors relating to the violation, including the seriousness of the violation, the degree of the toxicity of the violation and the economic benefit the violator received from the violation.

3) Further, a provision is added to provide, on a one-time basis only, that where a discharger has not previously received notification from the state or regional board of a complaint to impose mandatory minimum penalties for failure to file a discharge monitoring report, and where the current reporting violation consists only of failures to file discharge monitoring reports where the discharges did not violate numeric effluent limitations, that discharger will be subject to a total fine of \$3,000 per required report. The foregoing relief is provided only on this one-time basis, and if subsequent reporting violations occur, the discharger will be subject to mandatory minimum penalties as provided in the pre-existing law. The amendments also provide that even if the one-time relief applies, the discharger may still be subject to the discretionary penalties for failure to file the required report(s), as discussed in Item 2, above.

4) Lastly, a provision is added as new subdivision (e) to Water Code Section 13385.1 to provide that the amendments made to that section would apply to dischargers who currently have outstanding notices of violation as of the effective date of the act. This provision is necessary to ensure that local governmental agencies that have received notices of violations for substantial mandatory minimum penalties imposed under pre-existing law for minor paperwork violations and/or reporting violations for non-harmful discharges receive the relief provided by the other amendments discussed above.

I thank you in advance for your favorable consideration of this legislation. If you or your staff has any questions, please feel free to contact my office, at (916) 651-4040.

Sincerely,


Denise Moreno Ducheny
Senator, 40th District

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 1284 **AUTHOR:** Ducheny

DATE: 9/8/10 **DUE:** 9/30/10

SENATE: 31-0 **ASSEMBLY:** 77-0

CONCURRENCE: 37-0

PRESENTED BY: John Moffatt

RECOMMEND: Sign ☐ Veto ☐

SUMMARY

This bill revises the Mandatory Minimum Penalties (MMPs) statute by exempting dischargers from MMPs for failure to file a discharge monitoring report if the dischargers submit a written statement that no discharges to surface water occurred and reasons for not filing the monitoring report. The bill also requires that until January 1, 2014 the mandatory minimum penalty of \$3,000 be assessed only for each required report that is not timely filed rather than for each 30-day period following the submission deadline. Revisions also allow a Regional Water Board (after public hearing) to extend the time schedule imposed in a cease and desist order or a time schedule order for an additional five years to meet compliance with effluent limitations.

SPONSOR: Association of California Water Agencies
Regional Council of Rural Counties

SUPPORT: California Environmental Protection Agency
State Water Resources Control Board
Department of Finance
California Special Districts Association
City of Bellflower
City of Glendale Water and Power
City of La Verne
City of Norwalk
City of Signal Hill
County of Nevada
Eastern Municipal Water District
League of California Cities
Park Water Company
Water Replenishment District of Southern California

OPPOSITION: None Received

FISCAL IMPACT

This bill has no state fiscal impact. The Water Resources Control Board indicates this measure will not result in any increased costs and Department of Finance notes that creating new exemptions to MMPs can result in an unknown amount of reduced revenue to the Cleanup and Abatement Account (CAA). The CAA is used to fund abatement activities at sites with water pollution issues where no responsible party is currently identified.

PREVIOUS ACTION/SIMILAR LEGISLATION

AB 914 (Logue, Vetoed, 2009) would have made changes to allow the Regional Water Boards to authorize POTWs serving small, disadvantaged communities to complete compliance projects in lieu of paying MMPs for water quality violations. The veto message stated “the bill is unnecessary since the Board already has the authority under current law to take any factor it deems appropriate into consideration when making a determination of financial hardship of a small community served by a POTW”.

The \$3,000 MMP assessed for each 30-day period that a waste discharge report is not submitted was enacted in 2003 as part of AB 1541 (Montanez, Chapter 609).

NOTES